



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, made on September 13, 2021 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage and loss;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Landlords and the Tenants attended the hearing at the appointed date and time. The parties confirmed service and receipt of their respective Application and documentary evidence packages. The Landlords stated that they received the Tenants' documentary evidence on November 8, 2021 which they felt was served late. Furthermore, the Landlords stated that they received the Tenants' evidence package in their mail slot which is contrary to the rules of service.

Preliminary Matters

According to the Rules of Procedure 3.15 - Respondent's evidence provided in single package;

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package. The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see

Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than **seven days** before the hearing.

Section 88 of the Act set out how to give or serve documents generally

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;**
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service provided for in the regulations.

In this case, I note that the Applicants have different service timelines (14 days) than the Respondents (7 days). Furthermore, I find that service methods are different with respect to serving the Notice of Hearing (Section 89 of the *Act*) as opposed to serving documentary evidence (Section 88 of the *Act*). As the Landlords confirmed having received the Tenant's documentary evidence on November 8, 2021, which is 10 days before the hearing, and that it was served in their mail slot, I find that the Tenants have sufficiently served the Landlords with their documentary evidence in accordance with the Rules of Procedure and the *Act*. I find all the above-noted documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to a monetary order for damage or loss, pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to retaining the Tenants' security deposit, pursuant to Section 38, and 72 of the *Act*?
3. Are the Landlords entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following: the tenancy began on July 19, 2020. During the tenancy, the Tenants were required to pay rent in the amount of \$1,900.00 to the Landlords on the first day of each month. The Tenants paid a security deposit in the amount of \$950.00 which the Landlords continue to hold. The tenancy ended on August 31, 2021 and the Tenants provided their forwarding address to the Landlords during the condition inspection on August 31, 2021.

The Landlords provided a monetary calculation of their claims amounting to \$1,118.15.

The Landlords are claiming \$1,270.65 for the replacement of the fridge in the rental unit. The parties agreed that the rental unit was new at the start of the tenancy. The Landlords stated that at the end of the tenancy, the fridge was damaged as there were

5 or 6 dents observed on the outside of the fridge, as well as broken bins inside the fridge. The Landlords provided several pictures of the fridge and explained that the light reflect differently on the damaged panels compared to the new fridge. Furthermore, the Landlords provided pictures of cracked shelving in the fridge.

The Landlords stated that they received a quote in relation to replacement of the damaged portions of the fridge, however, this proved to be more expensive than the complete replacement of the fridge. The Landlords provided a quote for parts, as well as the invoice of the new fridge in support.

The Landlords stated that it is likely that they can sell the damaged fridge for \$500.00, therefore, they have reduced their claim by this amount to mitigate their loss. The Landlords are claiming \$16.75 in relation to renting a trailer to deliver the new fridge and remove the damaged fridge from the rental unit. The Landlords provided a receipt in support.

The Tenants deny having dented the fridge. The Tenants stated that the fridge had the same pattern of reflections at the start of the tenancy, which the Landlords are claiming as damage at the end of the tenancy. The Tenants provided a promotional video of the rental unit which had been prepared by the Landlords, which demonstrates the condition and subsequent reflections of the fridge at the start of the tenancy in support. Furthermore, the Tenants provided pictures of the fridge which were captured from different angles than those of the Landlords showing no dents in the fridge paneling.

The Landlords are claiming \$330.75 in relation to cleaning costs. The Landlords stated that the Tenants had a cleaner attend the rental unit, however, they did not do a thorough job cleaning, missing several areas in the rental unit. The areas which required further cleaning includes the kitchen backsplash, stained counter, greasy and dirty drawers and floors throughout the rental unit. The Landlords stated that it took the cleaner a further 9 hours at \$35.00 per hour to clean.

The Tenants stated that they employed the cleaner who had been suggested to them by the Landlords. The Tenants stated that the rental unit was reasonably clean at the end of the tenancy and they do not agree with the Landlords' assessment of the cleanliness.

Both parties provided pictures of the condition of the rental unit. During the hearing, it was confirmed that the majority of the pictures of the rental unit provided by the Landlords were taken prior to the Tenants' having had an opportunity to clean the rental

unit. The Landlords referred to three pictures which were taken after the Tenants employed the cleaner. The Tenants also provided several videos of the condition and cleanliness of the rental unit at the end of the tenancy.

If successful, the Landlords are seeking the return of the filing fee paid to make the Application.

Analysis

Based on the uncontested affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlords to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlords did what was reasonable to minimize the damage or losses that were incurred.

According to the Residential Tenancy Policy Guideline 1; The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply

with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act*.

The Landlords are claiming for the replacement cost of the fridge in the rental unit as they claim that the Tenants dented the fridge and broke some bins. In this case, I accept that both parties provided ample pictures of the fridge in support of its condition. I find that the Landlords' pictures show a distorted reflection of the light on the front panels of the fridge. The Tenants provided pictures of the fridge from a different angle, which shows no apparent dents in the fridge. I find that the Landlords provided insufficient evidence to demonstrate that the fridge panels were damaged to the extent that they required replacement. I find that the Landlords have provided insufficient evidence to demonstrate that the fridge was damaged by the Tenants to the extent that the fridge needed to be replaced.

As such, I decline to award the Landlords monetary compensation for a replacement fridge and for the cost of delivery. I am however satisfied based on the Landlords' evidence that the Tenants caused damage to some door bins in the fridge. I find that the Landlords quote for replacement parts clearly outlines the cost associated with replacing two cracked bins in the amount of \$49.46 each, and one shelf wire in the amount of \$19.99. I find that the Landlords are entitled to compensation to replace these parts for a combined total of **\$118.91**.

With respect to the Landlords' claim for cleaning costs, I find that the majority of the Landlord's pictures provided in support of the condition of the rental unit were taken before the Tenant's had their cleaner attend to clean the rental unit. In contrast, the Tenants provided several videos and pictures to demonstrate the condition of the rental unit after their cleaner had attended. I find the Tenants provided sufficient evidence that they left the rental unit reasonably clean. I find that the Landlords provided insufficient evidence to demonstrate that the rental unit required further cleaning. I dismiss this claim without leave to reapply.

Having been partially successful, I find the Landlords are entitled to recover the **\$100.00** filing fee paid to make the Application. I also find it appropriate in the circumstances to order that the Landlords retain \$218.91 from the Tenants' \$950.00 security deposit held in satisfaction of the claim ($\$950.00 - \$218.91 = \$731.09$)

Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$731.09, which represents the remaining balance of their security deposit less the previously mentioned deductions.

Conclusion

The Landlords have established an entitlement to monetary compensation in the amount of \$218.91 which has been deducted from the security deposit. The Tenants are granted a monetary order in the amount of \$731.09 which represents the remaining balance of the Tenants' security deposit. The order should be served to the Landlords as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 23, 2021

Residential Tenancy Branch