



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 1, 2021 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss;
- an order to retain the Tenant's security and pet damage deposits; and
- an order granting recovery of the filing fee.

At the beginning of the hearing, the Tenant acknowledged receipt of the Landlords' Application and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Tenant acknowledged that she did not submit any documentary evidence in response to the Application.

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 an order to retain the Tenant's deposits pursuant to Section 38 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 started on August 1, 2011. During the tenancy, the Tenant was required to pay rent in the amount of \$2,150.00 to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$1,000.00 and a pet damage deposit in the amount of \$500.00, both of which are currently being held by the Landlords. The tenancy ended on August 29, 2021.

The Landlords' Agent stated that the Tenant vacated the rental unit on August 29, 2021. A move out condition inspection of the rental unit was completed between the parties at that time. The Landlords' Agent stated that the new occupants of the rental unit moved in on August 31, 2021. The Landlords' Agent stated that on September 1, 2021, he received a call from the new occupants advising that there was a flood in the rental unit. The Landlords' Agent stated that he quickly attended the rental unit to find that the washing machine was leaking from the filter. The Landlords' Agent stated that he found the filter had not been tightened, which resulted in a large amount of water to leak from the washing machine, impacting several areas of the rental unit.

The Landlords' Agent stated that he employed the services of a restoration company to remediate the damage caused by the leak. The Landlords' Agent stated that he does not feel as though the Tenant meant to cause a leak, however, he had texted the Tenant who confirmed that she had cleaned out the filter prior to the end of the tenancy. The Landlords' Agent stated that the Tenant was negligent with respect to ensuring the filter was properly tightened after she cleaned it. The Landlords' Agent stated that the Landlords are seeking compensation in the amount of \$2,000.00 which is the amount of the insurance deductible paid by the Landlords. The Landlords provided pictures and video of the damage, along with the remediation report and insurance deductible in support.

In response, the Tenant stated that the Landlords' Agent had requested that the Tenant clean the filter throughout the tenancy, which she completed numerous times without incident. The Landlords' Agent confirmed this and stated that he showed the Tenant how to clean the filter accordingly. The Tenant stated that she cleaned the filter about one week prior to the end of the tenancy. The Tenant stated that she ran three loads after cleaning the filter before the tenancy ended, without incident. The Tenant made

arrangements to have her daughter A.A. call into the hearing, who stated that she witnessed the Tenant clean the filter on August 23, 2021. A.A. stated that she ran three loads of laundry before the tenancy ended on August 29, 2021. A.A. stated that the washing machine worked without any issues and there was no sign of water leaking during this time. The Tenant stated that they should not be held responsible for the washing machine which had been used by the new occupant on September 1, 2021.

Analysis

Based on the 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 Tenant. 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 "Policy Guideline"); the landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

The Landlords are seeking monetary compensation in the amount of \$2,000.00 which was the cost of the insurance deductible as a result of a leak that occurred in the rental unit on September 1, 2021. In this case, I find that the Landlords provided insufficient evidence to demonstrate that the Tenant was responsible for causing the leak either deliberately or through negligence. I accept that the tenancy ended on August 29, 2021 and that the parties completed a condition inspection of the rental unit. I find that it would have been the Landlords' responsibility to check the appliances in the rental unit, including the washing machine to ensure it was in good working order.

In light of the above, I dismiss the Landlords' Application for monetary compensation without leave to reapply. As the Landlords were not successful, I find that they are not entitled to the return of the filing fee. As the Landlords continue to hold the Tenant's deposits totalling \$1,500.00, I find that the Tenant is entitled to a monetary order in the amount of **\$1,500.00** which represents the full return of the Tenant's security and pet damage deposits.

Conclusion

The Landlords have provided insufficient evidence to demonstrate that the Tenant caused the leak by deliberate actions or neglect. As such, the Landlords' Application is dismissed without leave to reapply. The Tenant is provided with a monetary order in the amount of \$1,500.00 which represents the full return of their security and pet damage deposits currently being held by the Landlords. 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: March 15, 2022

Residential Tenancy Branch