



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 Landlord's Application for Dispute Resolution, made on September 14, 2021. The Landlord applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- a monetary order for the cost to repair damage that the Tenant, their pets or their guests caused during the tenancy;
- an order permitting the Landlord to retain the security deposit; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing and was accompanied by FG, a witness. The Tenants attended the hearing. All in attendance provided a solemn affirmation at the beginning of the hearing.

The Landlord testified that the Notice of Dispute Resolution Proceeding package was served on each of the Tenants by registered mail on August 10, 2021. The Tenants confirmed receipt.

The Tenants testified that the documentary evidence upon which they rely was served on the Landlord by registered mail on May 13, 2022. The Landlord confirmed receipt.

No issues were raised with respect to service or receipt of the above documents during the hearing. The parties were in attendance and were prepared to proceed. Accordingly, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes 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.

During the hearing, the parties engaged in settlement discussions relating to the Landlord's claims. Any statements made in the context of settlement discussions have not been considered or included in this decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for the cost to repair damage that the Tenant, their pets or their guests caused during the tenancy?
2. Is the Landlord entitled to an order permitting the Landlord to retain the security deposit?
3. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began on May 1, 2018 and that the Tenants vacated the rental unit on September 28, 2021. Rent during the tenancy was \$4,700.00 per month. The Tenants paid a security deposit of \$2,350.00, which has been retained by the Landlord pending the outcome of this hearing. A copy of the tenancy agreement was submitted into evidence.

The Landlord seeks to recover \$1,901.45 for damage to the rental unit and \$100.00 in recovery of the filing fee paid to make the application.

The Landlord's claim was described in a Monetary Order Worksheet dated October 4, 2021. First, the Landlord claimed \$1,712.00 to repaint the rental unit. The Landlord testified this aspect of the claim was based on a quote. He testified that he painted the rental unit and the laundry closet door himself which took four days.

In support, the Landlord submitted photographs of the rental unit at the beginning and end of the tenancy. The photographs taken at the beginning of the tenancy do not show any obvious damage. Further, the Condition Inspection Report referred to below does not indicate any issues with painting or wall damage at the beginning of the tenancy.

However, the photographs taken at the end of the tenancy indicate that a bedroom in the rental unit was painted blue during the tenancy. The photographs also show damage to the bedroom walls and ceiling, attempted patches to a bedroom wall and a medial wall, a gouge in the baseboard, and paint on the ceiling.

In reply, the Tenants testified that after the move-out inspection, they received an email from the Landlord who advised that he would deduct the cost. The Tenants testified that they told him that he had to follow guidelines and submitted that the quote was quite expensive. In support, the Tenants submitted a similar quote for \$700.00 dated September 26, 2021.

Second, the Landlord claimed \$139.45 for a replacement laundry closet door, which was supported by an invoice. The Landlord testified that he replaced the laundry closet door, which was damaged during the tenancy. In support, the Landlord submitted photographs of the laundry closet door at the beginning and end of the tenancy. The photographs taken at the beginning of the tenancy do not show any obvious damage. The Condition Inspection Report does not indicate any issues with the laundry door at the beginning of the tenancy. However, a photograph taken of the laundry door at the end of the tenancy shows bubbling and damage to the door.

The Landlord testified there was no communication from the Tenants about issues with the door and that the damage was not discovered until the move-out inspection.

In reply, the Tenants suggested that the damage was caused by a ventilation issue. Specifically, that there is no ventilation in the laundry closet where the washing machine and dryer are located. The Tenants acknowledged they did not advise the Landlord of the issue.

Third, the Landlord claims \$100.00 for the cost to install the laundry closet door with the assistance of a friend. The Landlord testified the installation took about a day to complete and the amount claimed is less than the quote for \$350.00 he obtained.

A photograph of the damaged laundry door was submitted in support. Damage appears to be related to moisture on the interior side of the door. The Condition Inspection Report does not indicate any issues with the laundry door at the beginning of the tenancy.

In reply, the Tenants disagreed with this aspect of the claim noting, as above, that the damage could not have been avoided due to the design of the laundry closet.

Fourth, the Landlord claims \$50.00 for the cost to repair a broken bathroom tile. The Landlord confirmed this amount is an estimate and the work has not been completed. The Landlord testified he was unable to get a contractor to fix the damage based on the size of the job. A photograph of a broken tile was submitted in support. The Condition Inspection Report does not indicate any issues with the tile at the beginning of the tenancy.

In reply, the Tenants testified they do not agree with this aspect of the Landlord's claim. The Tenants testified that the damage is immediately behind the bathroom door where it is not possible to stand or drop something. The Tenants suggested it is a structural issue and that the damage was not caused by their negligence.

The above claims were supported by a Condition Inspection Report. It indicates that a move-in inspection was completed on May 30, 2018. Although the date is not indicated on the Condition Inspection Report, the parties agreed that a move-out inspection was completed. The Tenant LB signed the Condition Inspection Report and agreed that it fairly represented the condition of the rental unit.

Finally, the Landlord seeks to recover the \$100.00 filing fee paid to make the application.

Analysis

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

Section 67 of the Act empowers the director 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 because 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 Landlord 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 Landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Landlord's claim for \$1,712.00 to repaint the rental unit, I find there is insufficient evidence before me to grant the relief sought. Although I am satisfied that the damage to the walls and ceilings referred to in the Condition Inspection Report and depicted in the photographs submitted into evidence was caused by the Tenants during the tenancy, the Landlord confirmed that he painted the rental unit (including the laundry closet door) himself. However, he did not provide documentary evidence in support of his actual losses. As a result, I find the value of the Landlord's loss has not been established. This aspect of the Landlord's claim is dismissed.

However, Policy Guideline #16 confirms that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. In this case, even though the Landlord has not established the value of his loss, I find the damage to the walls and ceilings referred to in the Condition Inspection Report and depicted in the photographs submitted into evidence was caused by the Tenants during the tenancy. As a result, I find that a nominal damages award of \$100.00 is appropriate.

With respect to the Landlord's claim for \$139.45 to replace the laundry closet door, I find there is sufficient evidence before me to grant the relief sought. The Landlord submitted a receipt in support of the purchase to demonstrate the value of his loss. In addition, the Tenants acknowledged they did not advise the Landlord of the issues with the door during the tenancy which I find may have permitted the Landlord to take steps to prevent the damage. I find the Landlord has established an entitlement to a monetary award of \$139.45 for the cost to replace the laundry closet door.

With respect to the Landlord's claim for \$100.00 for the cost to install the laundry door, I find there is sufficient evidence to grant the relief sought. As noted above, I find the loss arose because the Tenants failed to advise the Landlord of damage as it developed, thereby increasing the amount of the Landlord's loss. In addition, I find it is reasonable to compensate the Landlord for time spent replacing the laundry closet door which was damaged during the tenancy. The Landlord is granted a monetary award of \$100.00 for the cost to install the laundry closet door.

With respect to the Landlord's claim for \$50.00 for the cost to replace the bathroom tile, I find there is insufficient evidence before me to grant the relief sought. The Landlord confirmed that the tile has not been repaired since the tenancy ended more than eight months ago and that the unit has been re-rented. I find that the value of the Landlord's loss, if any, has not been established and that it is unlikely that the repair will be completed. As a result, I find that this aspect of the Landlord's claim is dismissed.

Considering the above, I find the Landlord is entitled to a monetary award \$439.45 which is comprised of \$339.45 for damage to the rental unit plus \$100.00 in recovery of the filing fee.

Policy Guideline #17 provides that an arbitrator will order the return of any balance remaining on a security deposit, whether or not the tenant has applied for dispute resolution for its return. Therefore, pursuant to section 67 of the Act and Policy Guideline #17, I order the Landlord to pay \$1,910.55 to the Tenants. This amount reflects the balance of the security deposit held by the Landlord after the Landlord's claim has been deducted, and has been calculated as follows:

Claim	Allowed
Painting (nominal damages):	\$100.00
Laundry closet door:	\$139.45
Laundry closet door installation:	\$100.00
Cracked tile repair:	\$0
Filing fee:	\$100.00
LESS security deposit:	(\$2,350.00)
TOTAL:	(\$1,910.55)

Conclusion

The Tenants are granted a monetary order in the amount of \$1,910.55. The order 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: June 13, 2022

Residential Tenancy Branch