



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNRL, MNDL-S, FFL

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, made on November 25, 2021 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent;
- a monetary order for damage, compensation, or loss;
- an order to retain the security and pet damage deposit; and
- an order granting recovery of the filing fee.

The Landlords, the Landlords' Counsel V.R., and the Tenants attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised, I find these 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 compensation or loss, pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?

3. Are the Landlords entitled to retaining the security deposit and pet damage deposit, pursuant to Section 38, and 72 of the *Act*?
4. 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 May 1, 2020. The Tenants were required to pay rent in the amount of \$2,000.00 to the Landlords on the first day of each month. The Tenants paid a security and pet damage deposit, each in the amount of \$1,000.00, for a total of \$2,000.00 currently being held by the Landlords. The tenancy ended on May 15, 2021. The Landlords received the Tenants' forwarding address on November 19, 2021.

The Landlords provided a monetary worksheet and supplementary written submissions documents which outlined the following monetary claims;

The Landlords are claiming \$2,240.01 in relation to the cost associated with staying in a short-term vacation rental from May 1 to 15, 2021. The Landlords stated that the Tenants did not comply with a Two Month Notice to End Tenancy for Landlord's Use of the Property. The Tenants stated that they disputed the Two Month Notice as they felt as though the Two Month Notice was served in bad faith. The parties agreed that they had a hearing date set for June 3, 2021.

The Tenants stated that they found another unit and emailed the Landlords on April 22, 2021 indicating their intent to vacate the rental unit on May 15, 2021. The Tenants provided the email communication with the Landlords in support.

The Landlords stated that they were required to move twice as the Tenants continued to occupy the rental unit beyond the April 30, 2021 effective date of the Two Month Notice. As such, the Landlords are claiming for the added moving costs which includes; \$196.25 for the moving trailer, \$269.20 for gas, \$74.08 for mail forwarding, \$225.75 for a storage unit and \$472.50 for pet boarding their two cats.

The Landlords are claiming compensation in the amount of \$11,095.83 for attorney fees. The Landlords referred to term 33 in their tenancy agreement which sets out that Landlords are entitled to seek a reasonable sum for their attorney fees.

With respect to damage to the rental unit, the Landlords are claiming \$8,001.30 to replace ceiling tiles that the Tenants' cat damaged during the tenancy. The Landlords stated that there were some missing tiles in the ceiling which made it so that a cat could get up into the ceiling. The Landlords stated that their own cat also went up in the ceiling prior to the tenancy and damaged several ceiling tiles. The Tenants admitted that during the tenancy, their cat did similar damage to what the Landlord's cat had previously done. The Landlords stated that they are unable to replace the missing tiles, therefore, a new ceiling is needed. The Landlords stated that the ceiling has not yet been repaired and provided a quote in support of the cost.

The Landlords' monetary order worksheet states that the Landlords are claiming \$5,717.18 in relation to "*lawn maintenance, professional cleaning, drywall repair, fence repair and changing the locks*" the Landlords also referred to their written submission where the Landlords claim "*the remaining Premises Damage pertains to lawn maintenance, professional cleaning, drywall repair, metal fence repair and changing the locks. This accounts for the further difference of \$2,716.18*". The Landlords did not provide a detailed account to each item, nor did not provide a receipt in support of each item being claimed for.

The Landlords stated that they feared retaliation from the Tenants, therefore, they found it necessary to install security cameras at the rental property following the end of the tenancy, in the amount of \$382.02. The Tenants stated that they did not make any threats towards the Landlords, nor did they give the Landlords any reason to be concerned.

The Landlords are claiming \$134.47 in relation to a one-night hotel stay after the Tenants did not let them into the rental unit for an inspection on May 14, 2021. The Landlords stated that they wished to view the rental unit as they suspected that the Tenants were causing damage.

The Landlords are claiming that they were required to replace all the carpets, which cost \$4,061.92. The Landlords stated that the carpet in the rental unit was from the "*mid 90's*". The Landlords referred to the tenancy agreement which stated that the carpets must be professionally cleaned upon move-out, but the tenants failed to do so. The Landlords provided pictures of the carpet in support. The Tenants responded and stated that they cleaned the carpets themselves and that the carpets were dirty prior to their tenancy.

Finally, The Landlords are claiming for paint and drywall repair in the rental unit which cost \$130.49. The Tenants stated that the walls were in poor condition prior to the commencement of the tenancy.

The Landlords are claiming \$3,465.00 in relation to repairing the concrete walkway at the rental unit. The Landlords stated that the Tenants were responsible for snow removal during the tenancy. The Landlords stated that the Tenants failed to clear the snow, which caused damage to the concrete below. The Landlords provided pictures and an estimate in support of the cost. The Tenants stated that they only cleared the snow in areas that they required access and denied causing damages to the walkway which showed deterioration prior to the start of the tenancy.

The Landlords are claiming for the loss of rent for May 2021 in the amount of \$2,000.00. The Landlords stated that the Tenants vacated May 15, 2021 and did not pay rent for May 2021. The Tenants stated that they provided the Landlords with their notice to end tenancy on April 22, 2021. The Tenants provided a copy of the emails in support. During the hearing, the Tenants agreed to compensate the Landlords for half a month of rent in the amount of \$1,000.00.

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 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.

The Landlords are claiming \$2,240.01 in relation to the cost associated with staying in a short-term vacation rental from May 1 to 15, 2021 as the Tenants did not vacate the rental unit on the effective date of the Two Month Notice. The Landlords stated that they were required to move twice as the Tenants continued to occupy the rental unit beyond the April 30, 2021 effective date of the Two Month Notice. As such, the Landlords are claiming for the added moving costs which includes; \$196.25 for the moving trailer, \$269.20 for gas, \$74.08 for mail forwarding, \$225.75 for a storage unit and \$472.50 for pet boarding their two cats.

I accept that the parties agreed that the Tenants disputed the Two Month Notice. As the dispute resolution hearing date was scheduled for June 3, 2021, I find that the Tenants were still entitled to occupy the rental unit until such a time the tenancy ended in accordance with the *Act*. I find that the Tenants did not breach the *Act* by remaining in the rental unit beyond the effective date of the Two Month Notice given they disputed the Two Month Notice, therefore, I dismiss the Landlords' claims without leave to reapply.

The Landlords are claiming compensation in the amount of \$11,095.83 for attorney fees. In this case, I find that legal fees are not recoverable under the *Act*. I find that the Landlords were at liberty to represent themselves during the hearing at no cost. As such, I find that the Landlords did not mitigate their loss, therefore, I dismiss this claim without leave to reapply.

With respect to damage to the rental unit, the Landlords are claiming \$8,001.30 to replace ceiling tiles that the Tenants' cat damaged during the tenancy. I accept that prior to the start of the tenancy, the Landlords' cat damaged some ceiling tiles. I find that the Landlords were aware that the ceiling was easily accessible to cats prior to the start of the tenancy. I find that the Landlords did not repair the ceiling prior to the start of the tenancy, which created the opportunity for the Tenants' cat to cause the same damage. I find that the Landlords did not mitigate their loss by leaving the ceiling open for further damage. I further find that the Landlords have not yet completed the work to

replace the ceiling, therefore, have not demonstrated a loss. As such, I dismiss this claim without leave to reapply.

The Landlords' monetary order worksheet states that the Landlords are claiming \$5,717.18 in relation to "*lawn maintenance, professional cleaning, drywall repair, fence repair and changing the locks*" the Landlords also referred to their written submission where the Landlords claim "*the remaining Premises Damage pertains to lawn maintenance, professional cleaning, drywall repair, metal fence repair and changing the locks. This accounts for the further difference of \$2,716.18*". The Landlords did not provide a detailed account to each item, nor did not provide a receipt in support of each item being claimed for.

Section 59 (2)(b) of the Act states that the Landlord must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. In this case, I find that the discrepancy in monetary amounts and lack of monetary breakdown for each item claimed does not provide me with the full particulars needed to make a decision. As such, I dismiss these claims without leave to reapply.

The Landlords stated that they feared retaliation from the Tenants, therefore, they found it necessary to install security cameras at the rental property following the end of the tenancy, in the amount of \$382.02. In this case I find that the Landlords have provided insufficient evidence that security cameras were necessary. Furthermore, the purchase of the security cameras was made following the end of the tenancy. As such, I dismiss this claim without leave to reapply

The Landlords are claiming \$134.47 in relation to a one-night hotel stay after the Tenants did not let them into the rental unit for an inspection on May 14, 2021. The Landlords stated that they wished to view the rental unit as they suspected that the Tenants were causing damage. I find that the Landlords had submitted a previous claim for a short-term vacation rental stay from May 1 to 15, 2021, therefore a one-night hotel stay on May 14, 2021 would not have been necessary. I find that the Landlords have provided conflicting testimony relating to their claims for accommodations. As such, I dismiss this claim without leave to reapply.

The Landlords are claiming that they were required to replace all the carpets, which cost \$4,061.92. During the hearing, the Landlords confirmed that the carpets were from the mid 90's. As such I find that the carpet in the rental unit was over 25 years old.

The Residential Tenancy Policy Guideline 40 is a general guide for determining the useful life of building elements for determining damages;

Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances. When applied to damage caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence. If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

According to Policy Guideline 40, carpet has a useful life of 10 years. Therefore, the carpet in the rental unit had more than doubled its useful life. I find that the Landlords are not entitled to compensation for the replacement of the carpet, therefore, I dismiss this claim without leave to reapply.

The Landlords are claiming for paint and drywall repair in the rental unit which cost \$130.49. The Tenants stated that the walls were in poor condition prior to the commencement of the tenancy. The Landlords also are claiming \$3,465.00 in relation to repairing the concrete walkway at the rental unit. The Landlords stated that the Tenants were responsible for snow removal during the tenancy. The Landlords stated that the Tenant's failed to clear the snow, which cause damage to the concrete below. The Tenants stated that they only cleared the snow in areas that they required access and denied causing damages to the walkway which showed deuteriation prior to the start of the tenancy.

According to Section 23(1) of the Act; The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
 - (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
 - (b) a previous inspection was not completed under subsection (1).
- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (4) The landlord must complete a condition inspection report in accordance with the regulations.

- (5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (6) The landlord must make the inspection and complete and sign the report without the tenant if
 - (a) the landlord has complied with subsection (3), and
 - (b) the tenant does not participate on either occasion.

I find that without a condition inspection being conducted at the start of the tenancy, it is difficult to compare the condition of the rental unit prior to the commencement of the tenancy, to the condition at the end of the tenancy. As such, I find that the Landlords have provided insufficient evidence to demonstrate that the damage to the rental unit was caused by the Tenants. In light of the above, I dismiss the Landlords' claims without leave to reapply.

The Landlords are claiming for the loss of rent for May 2021 in the amount of \$2,000.00. The Landlords stated that the Tenants vacated May 15, 2021 and did not pay rent for May 2021. The Tenants stated that they provided the Landlords with their notice to end tenancy on April 22, 2021.

Section 50 of the Act states: (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*] or the tenant receives a director's order ending a periodic tenancy under section 49.2 [*director's orders: renovations or repairs*], the tenant may end the tenancy early by:

- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice or director's order, and
- (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

In this case, I accept that the Tenants provided the Landlord with their notice to end tenancy on April 22, 2021 with a move out date of May 15, 2021. As such, I find that the Tenant were permitted to end the tenancy as of May 15, 2021 pursuant to Section 50 of the Act. As the Tenants agreed to compensate the Landlords for the half month of rent, I find that the Landlords are entitled to **\$1,000.00** which is equivalent to half a month of rent.

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 \$1,100.00 from the \$2,000.00, security and pet damage deposit held in satisfaction of the claim ($\$2,000.00 - \$1,100.00 = \$900.00$)

Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$900.00, which represents the remaining balance of their security and pet damage deposits, less the previously mentioned deductions.

Conclusion

The Landlords have established an entitlement to monetary compensation in the amount of \$1,100.00 which has been deducted from the Tenants' deposits. The Tenants are granted a monetary order in the amount of \$900.00 which represents the remaining balance of the Tenants' deposits. 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: July 20, 2022

Residential Tenancy Branch