



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, 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 deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on July 19, 2022 as a teleconference hearing. Only the Landlords attended the hearing at the appointed date and time. No one appeared for the Tenant. The conference call line remained open and was monitored for 26 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlords and I were the only persons who had called into this teleconference.

The Landlords had submitted an application for substituted service. On December 17, 2021 the Landlords were granted an order to serve the Tenant by email. The Landlords stated that they served the Tenant with the Notice of Hearing, the substituted service decision, and documentary evidence to the Tenant's email. The Landlords provided a screen shot of the email sent to the Tenant on December 19, 2021 in support. Pursuant to Section 71 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the above-mentioned documents three days later, on December 22, 2021.

The Tenant did not submit any documentary evidence in response to the Application. The Landlords 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, 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 Landlords testified that the tenancy began on January 1, 2020. During the tenancy, the Tenant was required to pay rent in the amount of \$900.00 to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$450.00 which the Landlords continue to hold. The Landlords stated that the tenancy ended on June 1, 2021.

The Landlords stated that they purchased the rental property in December 2020. The Landlords stated that there was no condition inspection report completed at the start of the tenancy, however, the Landlords stated that they had a home inspection completed prior to them purchasing the rental property, which according to the Landlords, did not report any damage. The Landlords did not provide a copy of these findings in support.

The Landlords stated that they served the Four Month Notice to the Tenant as they had only intended to renovate the upstairs of the home. The Landlords stated that they had not intended on renovating the downstairs, however, due to the poor condition of the rental unit, they were required to renovate downstairs as well.

The Landlords a detailed list of monetary claims for which they are seeking the following compensation;

The Landlords are claiming \$300.28 in relation to purchasing paint for the rental unit. The Landlords stated that the Tenant smoked in the rental unit, therefore, the entire rental unit needed to be repainted to get rid of the smell of smoke. The Landlords provided several video clips showing the Tenants leaving their rental unit to smoke just outside their door. The Landlords were unsure as to when the rental unit was last painted, however, provided a receipt in support of the paint costs.

The Landlords are claiming \$1,737.25 to purchase new carpet in the rental unit. The Landlords stated that they found cat litter, dirt, and stains on the carpet. Furthermore, the carpet also smelled like smoke. The Landlords provided pictures of the carpet in the rental unit in support. The Landlords were unsure as to the age of the carpet in the rental unit.

The Landlords are claiming \$154.99 for an air purifier to remove the smell of smoke in the air throughout the rental unit. The Landlords provided a receipt in support.

The Landlords are claiming \$36.00 for two trips to the dump to dispose of garbage that the Tenants left behind in the rental unit. The Landlords provided receipts in support

The Landlords are claiming \$36.97 to replace the lock in the rental unit. The Landlords stated that the Tenant did not return the keys at the end of the tenancy. As such, the Landlords were required to replace the lock. The Landlords provided a receipt in support.

The Landlords are claiming \$900.00 as the Tenant failed to pay rent for April 2021. The Landlords stated that the Tenant received May rent free as part of the compensation that the Tenant was entitled to relating to the Four Month Notice they had issued the Tenant. The Landlords stated that the Tenant did not pay rent for April or May 2021.

The Landlords are claiming \$14.90 which was the cost of the Registered Mail documents they sent to the Tenant's last known address, which was not provided as her forwarding address and therefore no approved for service.

The Landlords are claiming \$2,016.00 to replace the fridge in the rental unit. The Landlords stated that the Tenant left the fridge full of expired food and rancid items, which required the Landlords to dispose of the fridge. The Landlords provided a picture of the fridge which was still full of food.

The Landlords are claiming \$1,607.76 to replace the stove in the rental unit. The Landlords stated that the Tenant left the stove unusable, given there was food waste coated along the bottom and a horrific smell. The Landlords provided a picture of the stove in support.

The Landlords are claiming \$800.00 to compensate them for the time it took to clean the rental unit and repair some of the damaged items. The Landlords stated that it took them 32 hours at \$25.00 per hour. The Landlords provided several pictures in support.

The Landlords are claiming \$1,600.00 to compensate them for labour associated with cleaning and painting the walls in the rental unit as a result of the Tenant smoking in the rental unit. The Landlords stated took them 64 hours at \$25.00 per hour.

The Landlords are claiming \$1,200.00 to compensate them for the time it took to install the new flooring throughout the rental unit. The Landlords stated that it took them 48 hours at \$25.00 per hour.

The Landlords are claiming \$2,700.00 which represents three months loss of rental income as a result of the Landlord having to repair damage and clean the rental unit prior to being able to re-rent the rental unit.

No one appeared for the Tenant to dispute the Landlords' claims.

Analysis

Based on the uncontested 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 Landlord did what was reasonable to minimize the damage or losses that were incurred.

In addition, section 26(1) of the *Act* confirms: A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

Section 37(2) When a tenant vacates a rental unit, the tenant must;

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

The Landlords are claiming \$300.28 in relation to purchasing paint for the rental unit, \$154.99 for an air purifier to remove the smell of smoke in the air throughout the rental unit, and \$1,600.00 to compensate them for labour associated with cleaning and painting the walls in the rental unit.

I find that the Landlords provided insufficient evidence to demonstrate that the Tenant smoked inside the rental unit. Each video provided by the Landlords showed that the Tenant made efforts to go outside to smoke. As such, I decline to award the Landlords compensation these claims, which are dismissed without leave to reapply.

The Landlords are claiming \$1,737.25 to purchase new flooring, and \$1,200.00 to compensate them for the time it took to install the new flooring throughout the rental unit. While I accept that the carpet in the rental unit was left dirty, I find that the Landlords provided insufficient evidence to demonstrate that the entire carpet needed to

be replaced. I find that the Landlords could have mitigated their loss by attempting to clean the carpet rather than removing it completely. As such, I dismiss these claims without leave to reapply.

The Landlords are claiming \$36.00 for two trips to the dump to dispose of garbage that the Tenant left behind in the rental unit. I find that the Landlords provided sufficient evidence to demonstrate that the Tenant left garbage in the rental unit which needed to be disposed of. I am satisfied based on the receipts provided that the Landlord incurred a loss and therefore, I award the Landlords **\$36.00**.

The Landlords are claiming \$36.97 to replace the lock in the rental unit. The Landlords stated that the Tenant did not return the keys at the end of the tenancy. I find that the Tenant was required to return the keys at the end of the tenancy. I accept the Landlords testimony that the Tenant failed to do so. As such, I award the Landlords **\$36.97** to replace the lock to the rental unit.

The Landlords are claiming \$900.00 as the Tenant failed to pay rent for April 2021. I find that the Landlords provided sufficient evidence that the Tenant was required to, but failed to pay rent in the amount of \$900.00 for the month of April 2021. As such, I award the Landlords **\$900.00**.

The Landlords are claiming \$14.90 which was the cost of the Registered Mail documents they sent to the Tenant. I find that these costs are not recoverable under the Act, therefore, I dismiss this claim without leave to reapply.

The Landlords are claiming \$2,016.00 to replace the fridge in the rental unit. I find that the Landlords provided insufficient evidence to demonstrate that the fridge was left so dirty that the fridge required complete replacement. I find that the Landlords could have mitigated their loss by attempting to clean the fridge. Furthermore, the Landlords did not provide a receipt to support the value of their loss. As such, I dismiss this claim without leave to reapply.

The Landlords are claiming \$1,607.76 to replace the stove in the rental unit. I find that the Landlords provided insufficient evidence to demonstrate that the stove was left so dirty that the stove required complete replacement. I find that the Landlords could have mitigated their loss by attempting to clean the stove. Furthermore, the Landlords did not provide a receipt to support the value of their loss. As such, I dismiss this claim without leave to reapply.

The Landlords are claiming \$800.00 to compensate them for the time it took to clean the rental unit and repair some of the damaged items. I find that the Landlords provided sufficient evidence to demonstrate that the Tenant did not leave the rental unit reasonably clean. As such, I find that the Landlords are entitled to compensation in the amount of **\$800.00** for cleaning and repairs.

The Landlords are claiming \$2,700.00 which represents three months loss of rental income as a result of the Landlord having to repair damage and clean the rental unit prior to being able to re-rent the rental unit. I find that the Landlords have provided insufficient evidence that the rental unit was dirty or damaged to the extent that it would have taken three months to complete the work. As such, 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 the security deposit in the amount of \$450.00 in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlords are entitled to a monetary order in the amount of \$1,422.97, which has been calculated below;

Claim	Amount
Unpaid rent:	\$900.00
Cleaning/	\$800.00
Garbage Removal	\$36.00
New Lock:	\$36.97
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-(<i>\$450.00</i>)
TOTAL:	\$1,422.97

Conclusion

The Landlords have established an entitlement to monetary compensation and have been provided with a monetary order in the amount of **\$1,422.97**. The order should be served to the Tenant 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: August 17, 2022

Residential Tenancy Branch