



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 March 14, 2022. 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 Tenants, their pets or their guests caused during the tenancy;
- an order permitting the Landlord to retain the security deposit in partial satisfaction of the claim; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by AD, an agent. The Tenants attended the hearing on their own behalf. 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 the Tenants by registered mail on March 25, 2022. The Tenants acknowledged receipt. Further, RV testified that the Tenants' evidence was served on the Landlord by leaving a copy at the Landlord's office on October 27 and November 5, 2022. The Landlord acknowledged receipt. No issues were raised with respect to service or receipt of the above documents. The parties were in attendance and were prepared to proceed. Therefore, 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.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for the cost to repair damage that the Tenants, their pets or their guests caused during the tenancy?
2. Is the Landlord entitled to retain the security deposit held?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began in 2016 and ended on February 28, 2022. During the tenancy, rent of \$3,654.00 per month was due on the first day of each month. The Tenants paid a security deposit of \$1,750.00, which the Landlord holds.

The Application discloses a claim for \$2,761.00, which is particularized in an email to the Tenants dated March 7, 2022. The Landlord's claim includes the following:

Cleaning:	\$472.00
Painting:	\$1,575.00
Floor repair:	\$714.00
TOTAL:	\$2,761.00

The Landlord submitted a move-out Condition Inspection Report completed on February 23, 2022. AD testified that a move-in condition inspection was completed but a copy was not uploaded to the Residential Tenancy Branch Dispute Management System.

First, the Landlord claimed \$472.00 for cleaning costs. Specifically, AD testified that the kitchen, bathroom, and deck were "very dirty." AD referred to photographs of the inside of the fridge which show food particles and stains. AD also referred to photograph of the washing machine. Other pictures submitted show the condition of the deck, walls, doors, and window sills. AD also testified that the Landlord incurred this cost but did not submit an invoice or a receipt in support.

In reply, SRV testified that the Tenants hired a professional cleaning service that was recommended to them. However, the cleaners who attended suggested the clean-up would take 36 hours, which the Tenants thought was unreasonable. The Tenants testified that they paid a cleaner \$360.00 to clean the unit but that they did not clean properly. For example, VRV testified that the cleaners sprayed the inside of the oven with cleaner but did not finish cleaning it.

In response, AD testified that she spoke to the cleaning company and was advised that the rental unit was not ready for cleaning and that the Tenants did not want the cleaners to continue.

Second, the Landlord claimed \$1,575.00 to paint the walls. AD testified that there were scratches and nail holes on the wall, and tape. Photographs of the walls in the rental unit were submitted in support. AD also testified that the Landlord incurred this cost but did not submit an invoice or a receipt in support of the value of the loss.

In reply, SRV testified that they were the first tenants in the rental unit. SRV testified that after the Tenants moved in there were settlement issues which resulted in cracks that were not repaired or painted during the tenancy. SRV testified that scuff marks on the walls were reasonable wear and tear considering the duration of the tenancy. SRV also referred to the policy guidelines as authority for the position that landlords have an obligation to paint at reasonable intervals.

Third, the Landlord claims \$714.00 to repair the floors. AD testified there were scratches in the kitchen (near the fridge) and in the living room (near the window). AD testified that these scratches were difficult to repair. AD also testified that the Landlord incurred this cost but did not submit an invoice or a receipt in support of the value of the loss.

In reply, SRV testified that the scratch in the kitchen floor happened during one of several dishwasher repairs during the tenancy. SRV testified that the scratch in the living room floor likely occurred from moving the table from time to time. He suggested this was just wear and tear over the course of the tenancy.

Finally, the Landlord seeks to recover the \$100.00 filing fee paid to make the application and seeks an order permitting the Landlord to retain the security deposit held.

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 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 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 \$472.00 for cleaning, I find there is sufficient evidence before me to grant the relief sought. The claim was supported by images of the interior of the rental unit. In addition, the claim was supported by the testimony of the Tenants who acknowledged the cleaners they hired suggested more time was needed for cleaning but that they decided to limit cleaning costs to \$360.00. Although not supported by an invoice or a receipt, I find the amount claimed is reasonable and that the Landlord is entitled to a monetary award of \$472.00.

With respect to the Landlord's claim for \$1,575.00 for painting, I find there is insufficient evidence before me to grant the relief sought. The Landlord's claim was not supported by an invoice or receipt to establish the value of the loss. Further, I accept the evidence of SRV who testified that settlement issues that arose during the tenancy were not repaired or repainted during the tenancy.

In addition, Policy Guideline #1 indicates that a landlord is responsible to paint rental units at reasonable intervals. Policy Guideline #40 indicates that the useful life of interior paint is four years. Considering the duration of the tenancy (more than five years), I find that the Landlord had an obligation to paint the rental unit and that this cost cannot be attributed to the Tenants. This aspect of the Landlord's claim is dismissed without leave to reapply.

With respect to the Landlord's claim for \$714.00 for floor repairs, I find there is insufficient evidence before me to grant the relief sought. The Landlord's claim was not supported by an invoice or receipt to establish the value of the loss. Further, I accept the testimony of SRV who stated that the scratch on the kitchen floor was caused during a dishwasher repair and that the scratch on the living room floor was caused by normal wear and tear. This aspect of the Landlord's claim is dismissed without leave to reapply.

The Landlord has demonstrated an entitlement to a monetary award of \$472.00 for cleaning and \$100.00 in recovery of the filing fee. However, Policy Guideline #17 states:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit; or
- a tenant's application for the return of the deposit.

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

In this case, the Landlord has demonstrated an entitlement to a monetary award of \$572.00. The security deposit held is \$1,750.00. Therefore, in accordance with Policy Guideline #17 and section 67 of the Act, I find the Tenants are entitled to a monetary order for \$1,178.00, which has been calculated as follows:

Security deposit held:	\$1,750.00
<i>LESS</i> Landlord's monetary award:	\$572.00
TOTAL:	\$1,178.00

Conclusion

The Tenants are granted a monetary order in the amount of \$1,178.00. 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: November 16, 2022

Residential Tenancy Branch