



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LL: MNDL-S, FFL
 TT: MNSDS-DR, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlords’ Application for Dispute Resolution was made on July 13, 2022, (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for money owed for damage or loss;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Tenants’ Application for Dispute Resolution was made on July 20, 2022 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order granting the return of all or part of the security deposit; and
- an order granting recovery of the filing fee.

The Landlord A.S., 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 Applications and documentary evidence. As there were no issues raised relating to service, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties’ claims and my findings are set out below.

Issue(s) 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 granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
3. Are the Landlords entitled to retain the Tenants deposit pursuant to Section 38 of the *Act*?
4. Are the Tenants entitled to an order granting the return of their deposits, pursuant to Section 38 of the *Act*?
5. Are the Tenants 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 August 16, 2020. During the tenancy, the Tenants were required to pay rent in the amount of \$3,500.00 which was due to the Landlords on the first day of each month. The Tenants paid a security deposit and a pet damage deposit, each in the amount of \$1,750.00. The parties agreed that the Landlords have returned \$2,420.00 to the Tenants and have retained the remaining \$1,080.00. The Tenants provided their forwarding address to the Landlords on June 26, 2022, which the Landlord confirmed having received on the same day. The tenancy ended on June 29, 2022.

The Landlords have retained \$1,080.00 from the Tenant's security deposit for damages to the rental unit. The Landlords have outlined their monetary claims in their Application which has been reproduced below;

The Landlords are claiming \$222.88 to replace a damaged kitchen faucet. The Landlord stated that the new occupants moved into the rental unit on July 3, 2022. The Landlord stated that the occupants found a water stain on the ceiling in the basement on July 6, 2022 and report the leak to the Landlords. The Landlord stated that they had a plumber attend the rental unit and inspect the cause of the leak. The Landlord stated that it was determined that there was a small cut in the water supply line leading to the faucet. The Landlord stated that the new occupants had only occupied the rental unit for 30 hours before the leak was reported. The Landlord stated that the new occupants did not have many possessions, therefore, it is unlikely that they cause the cut in the water line. The Landlord provided a video of the leaking faucet in support.

The Landlords are claiming \$257.25 in relation to the plumber's inspection and subsequent replacement of the kitchen faucet. The Landlords provided the plumber's invoice in support. The Landlords are claiming \$100.00 to repaint the water-stained ceiling in the basement because of the leak from the kitchen faucet.

In response, the Tenants stated that they did not notice any leaks during their tenancy. The Tenants stated that they had used the sink to do a final cleaning on their last day of the tenancy and that there was no sign of water damage during the move out inspection. The Tenants stated that the new occupants may have accidentally caused the damage to the water supply line. As such, the Tenants do not feel responsible for compensating the Landlords for the above-mentioned loss.

The Landlords are claiming \$500.00 which is roughly half the quoted amount obtained by the Landlords to repaint the patched walls that had been painted by the Tenants during their tenancy. The parties agreed that the Tenants painted portions of the walls in the stairwell and living room. The Tenants stated that they had good intentions on repairing and painting the walls, however, they did indicate that the paint they used did not completely match the paint that was on the walls.

The Tenants stated that the Landlords were aware of the patchy paint job and didn't seem take issue until after the tenancy had ended. The Landlord stated that they did not notice the full extent of the Tenant's paint job until after their possession had been removed. The Landlord provided several quotes in support of the cost to repaint these areas and also pictures of the patchy painted walls in the rental unit.

With respect to the Tenants' Application, they are seeking the full return of the remaining portion of their security and pet damage deposit currently being held by the Landlords in the amount of \$1,080.00.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

Landlords' Claims

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.

Section 32 of the *Act* sets out the landlord's duty to repair and maintain, stating as follows: Landlord and tenant obligations to repair and maintain 32(1) A landlord must provide and maintain residential property in a state of decoration and repair that (a) complies with the health, safety and housing standards required by law, and (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant

According to the Policy Guideline 1 The tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

The Landlords have claimed \$222.88 to replace a leaking faucet and \$257.25 to investigate and install the new faucet after the new occupants of the rental unit discovered a leak after the tenancy had ended. The Landlord is also claiming \$100.00 to repaint the water-stained ceiling below as a result of the leak.

In this case I find that the Landlords have provided insufficient evidence to demonstrate that the leaking faucet was caused by the Tenants, as opposed to the new occupants who had already taken possession of the rental unit when the leak was discovered. I find there is insufficient evidence to demonstrate that the Tenants damaged the faucet intentionally or through neglect. As such, I find that it would be the Landlord's responsibility to repair the faucet and repaint the ceiling. I therefore dismiss these claims without leave to reapply.

The Landlords are claiming \$500.00 to repaint the walls in the stairwell and living room. I accept that the parties agreed that the Tenants had good intentions at painting portions of the wall. I accept that the paint did not match the pre-existing paint which caused a fair amount of square patches on the walls in the stairwell and living room. I find that it is reasonable for the Landlords to seek compensation to repaint these areas. I find based on the quotes provided by the Landlords that it is reasonable to award the Landlord the **\$500.00** they are seeking to repaint the walls.

Having been partially successful, I find the Landlord is entitled to recover the **\$100.00** filing fee paid to make the Application.

The Tenants had applied for the return of the remaining portion of their deposits in the amount of \$1,080.00.

Section 38(1) of the *Act* requires a landlord to repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit.

In this case, I accept that the Tenants provided the Landlords with their forwarding address which the Landlord confirmed receipt of on June 26, 2022 before the Tenants vacated the rental unit on June 29, 2022.

I find pursuant to section 38(1) of the *Act*, that the Landlord had until July 14, 2022 to repay the deposits or make an application for dispute resolution. I find that the Landlords submitted their Application to retain a portion of the Tenants' deposits on July 13, 2022, therefore, the Landlords are within the 15 day time limit from the date the tenancy ended. I find that the Tenant's Application for the return of their deposits was

not necessary. As such, I find that the Tenants are not entitled to the return of the filing fee.

The Landlords are entitled to monetary compensation in the amount of \$600.00. I order that the Landlords retain \$600.00 from the \$1,080.00 deposit held in satisfaction of the claim ($\$1,080.00 - \$600.00 = \$480.00$)

Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$480.00, which represents the remaining balance of their security and pet deposits currently being held by the Landlords, less the previously mentioned deductions.

Conclusion

The Landlords have established an entitlement to monetary compensation in the amount of \$600.00 which has been deducted from the deposits held. The Tenants are granted a monetary order in the amount of \$480.00 which represents the remaining balance of the Tenants' deposit. 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: April 21, 2023

Residential Tenancy Branch