



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

The Landlord's Application for Dispute Resolution was made on September 13, 2022 (the "Landlord's Application"). The Landlord applied for the following relief, pursuant to the *Act*:

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

The Tenants' Application for Dispute Resolution was made on September 30, 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 and pet damage deposits; and
- an order granting recovery of the filing fee.

The Landlord, the Landlord's Agent S.W. and the Tenant Y.L. 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 packages. As there were no issues raised relating to service, I find the above mentioned documents were sufficiently pursuant to Section 71 of the *Act*.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for damage or loss pursuant to Section 67 of the *Act*?

2. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
3. Is the Landlord entitled to retain the Tenants' security and pet damage deposits pursuant to Section 38 of the *Act*?
4. Are the Tenants entitled to an order granting the return of their security and pet damage 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 September 27, 2019. The Tenants were required to pay rent in the amount of \$2,892.00 to the Landlord on the first day of each month. The Tenants paid a security and pet damage deposit each in the amount of \$1,425.00 for a total of \$2,850.00 currently being held by the Landlord. The tenancy ended on August 31, 2022. The Tenant provided the Landlord with their forwarding address in writing on August 31, 2022, which the Landlord confirmed receipt of on the same date.

The Landlord's Claim

The Landlord is seeking compensation in the amount of \$3,138.45 to repair damages to several walls in the rental unit. The Landlord stated that during the move out condition inspection, there found several dents, scratches, and holes in wall, including one hole that had been covered with a piece of paper. The Landlord stated that the Tenants later tried to repair the hole on their own, however, the patch was painted with a different colour than what was on the rest of the wall. The Landlord stated that several walls trim needed to be repaired and repainted in the rental unit. The Landlord stated that only some of the work has been completed totalling \$1,000.00.

The Landlord provided several pictures of the condition of the rental unit from before and after the tenancy, a copy of the condition inspection report, a quote for repairs in the amount of \$3,402.04, and a receipt in the amount of \$1,000.00 confirming amount paid for repairs so far. The Landlord also referred to claims for cleaning, however, the Landlord confirmed that they had not included the cleaning claims in the current Application, therefore, these claims were not addressed in this decision.

Finally, the Landlords are seeking the recovery of their \$100.00 filing fee.

The Tenant respondent by acknowledging that they caused some damage to the walls, however, the Tenant stated that much of the damage was there at the start of the tenancy. The Tenant provided pictures from the start of the tenancy in support. The Tenant stated that they notified the Landlord's Agent about the damage during the move-in inspection, however, the Landlord's Agent was not concerned about the damage and that it was not recorded in the report. The Tenant attributes the damage to reasonable wear and tear and does not agree to compensating the Landlord the full amount of their claim.

The Tenants' Claim

The Tenants are claiming for the full return of their security and pet damage deposit. The parties agreed that the Landlord continues to hold the Tenants' deposits totalling \$2,850.00. The parties agreed that the Landlord received the Tenant's forwarding address in writing on the last date of the tenancy, August 31, 2022. The Tenant stated that they did not consent to the Landlord retaining any portions of their deposits. I note the Landlord applied to retain the Tenants' deposits on September 13, 2022. The Tenants are also seeking the return of the filing fee paid to make the Application.

Analysis

Based on all of the above, the evidence and testimony, 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 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.

The Landlord's Claim

The Landlord is claiming \$3,138.45 relating to wall and trim repair and painting throughout the rental unit. The Landlord provided a quote in the amount of \$3,402.04. The Landlord stated that only some of the work to repair the walls have been complete, which amounted to \$1,000.00. The Tenant acknowledged being responsible for some of the damage, but not all the damage that was noted by the Landlord.

In this case, I find that the Landlord has submitted sufficient evidence to demonstrate that they suffered a loss of \$1,000.00 to repair the walls in the rental unit. I find that this amount is reasonable to properly repair the hole made by the Tenants and to repaint the wall. I find that the Landlord has not provided sufficient evidence to demonstrate that they suffered any further loss beyond the \$1,000.00, therefore, I find that the Landlord is entitled to compensation in the amount of **\$1,000.00**.

Having been partially successful with their Application, I find the Landlord is entitled to the recovery of the **\$100.00** filling fee.

In summary, I find the Landlord has demonstrated an entitlement to a monetary award of \$1,100.00.

The Tenants' Claim

With respect to the Tenants' claim for the return of the security and pet damage deposits totalling \$2,850.00, section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making 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. If a landlord fails to repay deposits or make a claim against them within 15 days, section 38(6) of the *Act* confirms the tenant is entitled to receive double the amount of the deposits.

I accept that the tenancy ended on the same date that the Landlord received the Tenants' forwarding address, on August 31, 2022. Therefore, pursuant to section 38(1) of the *Act*, the Landlord had until September 15, 2022, to repay the deposits or make a claim against them. I find that the Landlord submitted their Application on September 13, 2022, which is within the time limit permitted under the *Act*. Accordingly, I find the Tenants are not entitled to the return of double the amount of the deposit.

Having not been successful in their Application, I find the Tenants are not entitled to the recovery of their filing fee.

After finding that the Landlord is entitled to compensation in the amount of \$1,100.00, I find it appropriate in the circumstances to order that the Landlord retain \$1,100.00 from the 2,850.00 deposits held in satisfaction of the claim ($\$2,850.00 - \$1,100.00 = \$1,750.00$).

Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$1,750.00, which represents the remaining balance of their security and pet damage deposits less the previously mentioned deductions.

Conclusion

The Landlord has established an entitlement to monetary compensation in the amount of \$1,100.00 which has been deducted from the security and pet damage deposits. The Tenants are granted a monetary order in the amount of \$1,750.00 which represents the remaining balance of the Tenants' deposits. The order should be served to the Landlord 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: June 12, 2023

Residential Tenancy Branch