



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1162612 B.C. LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDL-S, FFL**

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on October 14, 2022 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

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

The Landlord's Agents M.B., S.B., K.L., E.R., and the Tenant attended the hearing at the appointed date and time. At the start of the hearing, the Tenant confirmed receipt of the Landlord's Application and documentary evidence package. As no issues were raised with respect to service, I find these documents were sufficiently served pursuant to Section 71 of the Act. The Tenant confirmed that he did not submit any evidence in response to the Landlord's Application.

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 damage compensation or loss, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to retaining the security deposit, pursuant to Section 38, and 72 of the *Act*?

3. Is the Landlord 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 term of the tenancy; the tenancy began on June 5, 2019. During the tenancy, the Tenant was required to pay rent in the amount of \$2,100.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$1,050.00 which the Landlord continues to hold. The tenancy ended on September 30, 2022.

The Landlord is claiming for \$1,050 relating to damage and loss. The Landlord submitted a monetary order worksheet containing a list a monetary claims which have been reproduced below;

The Landlord is claiming \$500.00 for cleaning the rental unit at the end of the tenancy. The Landlord's Agents stated that the rental unit required further cleaning. The Landlord provided several pictures of the rental unit as well as the cleaner's invoice in support. The Landlord's Agents stated that the cleaners invoice prides a description of the work completed.

The Tenant responded by stating that the rental unit was left clean at the end of the tenancy. The Tenant stated that the pictures provided by the Landlord do not show any areas that required cleaning. The Tenant also stated that the invoice provided by the Landlord details a deep clean done to the rental unit, including several areas that the Landlord did not provide pictures of. As such, the Tenant does not agree with this claim.

The Landlord is claiming \$157.50 to repair a section of the flooring in the rental unit. The Landlord's Agents stated that there was a burn mark found on the laminate floor in the rental unit. The Tenant acknowledged that he was responsible for the burn mark, however, the Tenant found the cost of the repair was unreasonable.

The Landlord is claiming \$392.50 for painting the rental unit. The Landlord's Agents stated that the Tenant put tape on the wall above the window which caused a bit of damage to the paint. The Landlord's Agents stated it cost \$2,600.00 to repaint the rental unit, however, they are only claiming for the remaining balance of the Tenant's deposit in the amount of \$392.50. The Landlord provided pictures of the damaged wall and a painting invoice in the amount of \$2,782.50.

The Tenant acknowledged that he used tape to hang window coverings during the tenancy, which removed some paint when he removed the tape at the end of the tenancy. The Tenant stated that the invoice provided by the Landlord was the cost of repainting the entire unit. The Tenant stated that aside from the area where he put tape, there was no other damage to the walls that he would be responsible for.

If successful, the Landlord is seeking to retain the Tenant's security deposit as well as to recover the filing fee paid to make the Application.

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 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 Tenant. 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.

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 Landlord is claiming \$500.00 for cleaning the rental unit at the end of the tenancy. While the Landlord provided a copy of the invoice for cleaning, I find that the invoice details a deep cleaning of all areas in the rental unit. I find that the Landlord provided insufficient evidence to demonstrate that the Tenant did not leave the rental unit reasonably clean at the end of the tenancy. I find that the pictures provided by the Landlord do not show the rental unit required cleaning to the extent of charging the Tenant \$500.00. As such, I dismiss this claim without leave to reapply.

The Landlord is claiming \$157.50 to repair a section of the flooring in the rental unit. I accept that the Tenant took responsibility for the floor damage. While the Tenant did not agree with the cost associated with repairing the burn mark on the floor, I find that the Tenant provided insufficient evidence to demonstrate that the Landlord failed to mitigate their loss. I find that the Landlord suffered a loss and is entitled to compensation in the amount of **\$157.50**.

The Landlord is claiming \$392.50 for painting the rental unit. The Landlord provided an invoice in the amount of \$2,782.50 for painting the entire rental unit. While the Tenant confirmed that they caused some damage to the paint in one area as a result of taping up window coverings, I find that the Landlord has provided insufficient evidence to demonstrate how they arrived at \$392.50 for painting. I find that the Landlord provided insufficient evidence to demonstrate that the entire rental unit needed to be repainted as a result of the Tenant's tape removal. As such, I dismiss this claim without leave to reapply.

Having been partially successful, I find the Landlord 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 Landlord retain \$257.50 from the \$1,050.00 security deposit held in satisfaction of the claim ($\$1,050.00 - \$257.50 = \$792.50$).

Pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of \$792.50, which represents the remaining balance of their security deposit less the previously mentioned deductions.

Conclusion

The Landlord has established an entitlement to monetary compensation in the amount of \$257.50 which has been deducted from the security deposit. The Tenant is granted a monetary order in the amount of \$792.50 which represents the remaining balance of the Tenant's security deposit. 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: July 18, 2023

Residential Tenancy Branch