

DECISION

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the tenant under section 72 of the Act

The landlord's agents D.L., R.S., and the Tenant attended the hearing at the appointed date and time.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

At the start of the hearing, the tenant confirmed receipt of the landlord's Application and documentary evidence. As no issues were raised, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*. The Tenant confirmed that they did not submit any evidence in response to the landlord's Application.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on August 1, 2019. The landlord's agents stated that the tenant was required to pay rent geared to the tenant's income, which varied from time to time. The landlord's agents stated that near the end of the tenancy, the tenant was required to pay rent in the amount of \$640.00. The tenant stated that he was required to pay rent in the amount of \$600.00. Regardless, the parties agreed that the tenant paid a security deposit in the amount of \$450.00 which the landlord continues to hold. The parties agreed that the tenancy ended on January 31, 2022.

The tenant stated that he provided his forwarding address to the landlord by registered mail. The landlord's agents confirmed receipt on November 2, 2022. The tenant stated that he could not recall what date he sent his forwarding address to the landlord, however, the tenant confirmed that it was close to November 2, 2022.

The landlord is claiming \$75.00 for the replacement of a smoke detector in the rental unit. The landlord's agents stated that the tenant removed the smoke detector and that it was not in the rental unit at the end of the tenancy. The landlord's agents stated that the smoke detector was replaced at a cost of \$75.00. The landlord's agents stated that they did not provide an invoice in support.

The tenant responded and stated that he has notified the landlord that there was an issue with the smoke detector, however, they took no action to repair it. The tenant stated that he removed the smoke detector, but that it was left in the rental unit at the end of the tenancy. As such, the tenant doesn't feel as though he should have to pay for its replacement.

The landlord is claiming \$145.53 for the replacement of drapes in the living room and bedroom. The landlord's agents stated that new drapes were purchased at the start of the tenancy. The landlord's agents stated that two sets of drapes were missing at the end of the tenancy. The landlord submitted an invoice of the replacement of the drapes in support. The tenant denied removing the drapes and stated that they were there at the end of the tenancy.

The landlord is claiming \$100.00 for wall repair. The landlord's agents stated that the tenant had star stickers placed on the wall and ceiling of the rental unit. The landlord's agents stated that when the stars were removed, they left damage to the drywall which needed to be repaired. The landlord's agents stated that the rental unit was repainted after that, however, the painting cost is not being claimed from the tenant. The tenant denied that the stickers would damage the wall.

The Landlord is claiming \$600.00 to clean the rental unit and a further \$918.33 to dispose of garbage and the tenant's abandoned possessions at the end of the tenancy. The landlord's agents stated that the tenant did not make any efforts to clean the rental

unit which is shown in the pictures provided by the landlord. The landlord's agents stated that the rental unit smelled of urine and smoke and that there was a lot of food left in the cupboards and fridge. The landlord provided a detailed copy of the cleaner's time sheet in support. The landlord also provided several pictures and a receipt confirming payment for the disposal of the tenant's abandoned items.

The tenant stated that the pictures provided by the landlord are not accurate as they were taken prior to the tenant cleaning the rental unit. The tenant then stated that he had permission from the general manager that he did not have to clean the rental unit. Lastly, the tenant stated that he partially cleaned the rental unit, however, due to complications with his health, he was unable to complete the cleaning. The tenant also stated that he intended on returning to the rental unit to remove the remaining possessions.

The landlord is claiming \$5.00 to clean the remaining drapes in the rental unit which were not removed by the tenant. The landlord's agents stated that the drapes were cleaned in the on-site laundry facilities. The tenant acknowledged that the drapes were dirty and that he never cleaned them.

Analysis

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the landlord has established a claim for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

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 \$75.00 for the replacement of a smoke detector in the rental unit. I find that the landlord has provided insufficient evidence to demonstrate that the smoke detector was missing, or the value of their loss, such as a receipt confirming payment for the smoke detector replacement. As such, I dismiss this claim without leave to reapply.

The landlord is claiming \$145.53 for the replacement of drapes in the living room and bedroom. The landlord's agents stated that two sets of drapes were missing at the end of the tenancy. The landlord submitted an invoice of the replacement of the drapes in support. I find that it is more likely than not that the drapes were missing at the end of the tenancy resulting in the landlord having to replace them. I therefore award the landlord compensation in the amount of **\$145.53**.

The landlord is claiming \$100.00 for wall repair. The landlord's agents stated that the tenant had star stickers placed on the wall and ceiling of the rental unit. The landlord's agents stated that when the stars were removed, they left damage to the drywall which needed to be repaired. I find that the landlord provided insufficient evidence to demonstrate that there were stickers, that they caused damage, or that the landlord had to pay \$100.00 to repair the wall. As such, I dismiss this claim without leave to reapply.

The landlord is claiming \$600.00 to clean the rental unit and a further \$918.33 to dispose of garbage and the tenant's abandoned possessions at the end of the tenancy. I find that the tenant provided conflicting testimony with respect to the cleaning of his rental unit which I do not accept. I find that the landlord provided sufficient evidence to demonstrate that the rental unit required further cleaning and that the tenant's discarded possessions needed to be disposed of.

With respect to cleaning costs, the landlord was claiming \$600.00 for cleaning, however, their invoice for cleaning states that only \$400.00 was billed (20 hours at \$20.00 per hour). As such, I find that the Landlord is entitled to compensation for cleaning in the amount of **\$400.00**.

Regarding disposal costs, the landlord provided an invoice in the amount of \$918.33. I find that the landlord is entitled to recover this loss and award to Landlord **\$918.33**.

The landlord is claiming \$5.00 to clean the remaining drapes in the rental unit. The tenant confirmed that the drapes required cleaning. As such, I award the landlord **\$5.00**.

As the landlord was partially successful, I find that the landlord is 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 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 landlord is entitled to a monetary order in the amount of \$1,118.86, which has been calculated below;

Claim	Amount
Drapes:	\$145.53
Cleaning:	\$400.00
Garbage Removal:	\$918.33
Drape Cleaning:	\$5.00
Filing fee:	\$100.00
LESS security deposit:	-(<i>\$450.00</i>)
TOTAL:	\$1,118.86

Conclusion

The landlord has established an entitlement to monetary compensation and has been provided with a monetary order in the amount of **\$1,118.86**. 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 5, 2023

Residential Tenancy Branch