



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LL: MNRL-S, MNDL, FFL
 TT: MNDCT, 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 May 2, 2023, (the “Landlords’ Application”). The Landlords applied for the following relief, pursuant to the *Act*:

- a monetary order for damage or loss;
- a monetary order for unpaid rent;
- 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 October 5, 2023, (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- a monetary order for damage or compensation; and
- an order granting recovery of the filing fee.

The Landlords 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, amendment, and documentary evidence. As there were no issues raised, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Landlords entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to a monetary order for damage or loss pursuant to Section 67 of the *Act*?
3. Are the Landlords entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
4. Are the Landlords entitled to retain the Tenants security deposit pursuant to Section 38 of the *Act*?
5. Are the Tenants entitled to a monetary order for damage or loss, pursuant to Section 67 of the *Act*?
6. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. The parties testified that the fixed term tenancy began on July 1, 2022, and was meant to continue at least until June 30, 2023. During the tenancy, rent in the amount of \$2,000.00 was due on the first day of each month. The parties also agreed that the Tenants paid a security deposit of \$1,000.00 which the Landlords continue to hold.

The Landlords' Claim

The Landlords are claiming \$2,000.00 for loss of rent. The Landlords stated that the Tenants provided their notice to end tenancy on May 1, 2023 with a move out date of May 15, 2023. The parties agreed that the Tenants vacated the rental unit on May 8, 2023, and that they did not pay the Landlord any rent for May 2023. The Tenants stated that they consented to the Landlords retaining their security deposit of \$1,000.00 in lieu of the half month of May 2023 that they occupied the rental unit.

The Landlords stated that they could not find a new tenant to occupy the rental unit until June 1, 2023. As such, the Landlords are seeking compensation for the loss of rent for May 2023.

The Tenants stated that they moved out as they were unhappy with the front door of the rental unit, the details of which is covered in the Tenants' Application against the Landlord. The Tenants felt justified in ending the tenancy early on this basis.

The Landlords are claiming \$4,078.20 to replace the flooring in the rental unit. The Landlords stated that they found evidence that the Tenants had a cat in the rental unit, contrary to the no pet policy in the tenancy agreement. The Landlord stated that she is allergic to cats and intends on occupying the rental unit one day. The Landlord stated that due to her allergies, the flooring needs to be replaced as cat hair is likely stuck between floorboards and cannot be removed by cleaning. The Landlord also stated that the cat caused minor scratches. The Landlord confirmed that they did not submit any evidence showing scratches or cat hair on the flooring.

The Tenants confirmed that they were cat sitting on two occasions. The Tenants stated that the flooring was not damaged, and it was cleaned very well. The Tenants stated that the Landlords have not yet replaced the flooring.

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

The Tenants' Claim

The Tenants are claiming \$5,000.00 which represents \$500.00 in compensation for each month of the tenancy. The Tenants stated that the front door of the rental unit was not up to code for fire rating, had no peep hole, was not sound proof and would not latch properly. The Tenants stated that they were required to use two hands to hold the door closed before latching the deadbolt. The Tenants stated that the Landlords indicated that they would replace the door but failed to do so. The Tenants stated that the door caused them to fear for their safety and that they paid for a security system.

The Landlords stated that the door replacement was discussed at the start of the tenancy but acknowledged that the door was not replaced. The Landlords stated that the Tenants never raised the issue until near the end of the tenancy, which the Landlords believe was their attempt at creating a reason for ending the tenancy early.

Lastly, the Tenants claimed \$100.00 in recovery of the filing fee paid to make the Tenants' 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 Applicants 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 Respondents. Once that has been established, the Applicants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Applicants did what was reasonable to minimize the damage or losses that were incurred.

The Landlord's Claim

In relation to the Landlords' claim to recover unpaid rent in the amount of \$2,000.00 for May 2023 it is important to consider if the Tenants were entitled to ending the fixed term tenancy early.

According to Section 45 of the *Act*, A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that;

- (a) is not earlier than one month after the date the landlord receives the

- notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

According to Section 45(3) of the Act; if a Landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

The Residential Tenancy Policy Guidelines (the “Police Guidelines”) offers some clarity around what constitutes a material term. According to Policy Guideline 8; a material term is a term that the parties both agree at the start of the tenancy, is so important that the most trivial breach of that term gives the other party the right to end the agreement.

Furthermore, Policy Guideline 8 indicates that in order to end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- (a) that there is a problem;*
- (b) that they believe the problem is a breach of a material term of the tenancy agreement;*
- (c) that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- (d) that if the problem is not fixed by the deadline, the party will end the tenancy.*

Although the Tenants felt concerns relating to the front door of the rental unit, there is no testimony or documentary evidence before me that the parties understood and agreed either before or at the time the tenancy agreement was entered into, that the provision of the door meeting particular standards was a material term of the tenancy agreement. I further find that there is no evidence before me that the Tenants notified that Landlords in writing that there was a problem, that the problem is a breach of a material term, gave a deadline for fixing it and advised them that if it was not fixed by the deadline, they would end the tenancy.

I find that the Tenants had other remedies available to them at the time such as making an application for an order requiring the Landlords to make repairs pursuant to Section

32 of the *Act*. I find that the Tenants violated the *Act* by ending their fixed term tenancy early without cause.

I find that the Landlords have provided sufficient evidence to demonstrate that they have suffered a loss of rent in the amount of \$2,000.00, as a result of the Tenants violating the *Act* by ending their fixed term tenancy. I accept that the Tenants consented to the Landlords retaining their security deposit towards the outstanding balance of rent. As such, I grant the Landlords authority to retain the Tenants' security deposit in the amount of \$1,000.00 in partial satisfaction of their claim. I further find that the Landlords are entitled to a monetary award in the amount of **\$1,000.00** for the remaining portion of rent owed to the Landlords.

The Landlords are claiming \$4,078.20 to replace the flooring in the rental unit after finding evidence that the Tenants had a cat in their unit, contrary to the tenancy agreement. I find that the Landlords have provided insufficient evidence to demonstrate that the flooring was damaged by the cats or contaminated by cat hair, to the extent that the flooring required replacement. I find that the Landlords have not yet replaced the flooring, therefore, the Landlords have not incurred a loss. Lastly, the Landlords provided insufficient evidence to demonstrate that attempted to mitigate their loss by having the floors professionally cleaned. As such, I dismiss this claim without leave to reapply.

Having been partially successful with their Application, I find the Landlords are entitled to the recovery of their **\$100.00** filing fee.

The Tenants' Claim

The Tenants are claiming for compensation in the amount of \$5,000.00 in relation to issues they experienced with the front door of the rental unit. The Tenants stated that the front door of the rental unit was not up to code for fire rating, had no peep hole, was not soundproof, and would not latch properly. The Tenants stated that they were required to use two hands to hold the door closed before latching the deadbolt.

I find that the Tenants provided insufficient evidence to demonstrate that they communicated their concerns about the front door to the Landlords. I find that the Tenants provided no evidence in support of their testimony that the front door needs to have a peep hole, insulation, and fire rated. While I would expect that the front door should latch properly, the Tenants stated that the door latched only when locked, which requires the use of two hands. I find that this inconvenience does not merit monetary

compensation in the amount of \$5,000.00. As such, I dismiss this claim without leave to reapply.

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

Pursuant to section 67 of the *Act*, I find that the Landlords have demonstrated an entitlement to a monetary order in the amount of \$1,100.00 for the remaining portion of rent owed and the filing fee.

Conclusion

Pursuant to section 67 of the *Act*, the Landlords are granted a monetary order in the amount of \$1,100.00. The monetary order must be served on the Tenants 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: November 16, 2023

Residential Tenancy Branch