



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LL: MNRL-S, MNDL-S, MNDCL, 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 October 5, 2023, (the “Landlords’ Application”). The Landlords applied for the following relief, pursuant to the *Act*:

- a monetary order for compensation 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 11, 2023, (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 H.S. and the Tenant E.M. attended the hearing at the appointed date and time. The parties confirmed service and receipt of their respective Applications and 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*.

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 compensation 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 an order granting the return of the security deposit, pursuant to Section 38 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

The parties testified and agreed that the tenancy began on October 1, 2022, rent in the amount of \$2,850.00 was due to the Landlords on the first day of each month. The Tenants paid a security deposit in the amount of \$1,350.00 which the Landlords continue to hold.

The Tenants vacated the rental unit on September 19, 2023 and that the parties met on September 22, 2023 but the Landlords did not have the inspection report, therefore, they reconvened on October 5, 2023, at which point the move out condition inspection report was completed between the parties.

The Tenant stated that they provided the Landlord with their forwarding address by email, however, the Tenant could not recall what date it was sent to the Landlord. The Landlord could not recall what date the Tenants' forwarding address was received.

The parties provided a copy of the move out condition inspection which contains the Tenants' forwarding address in writing.

The Landlords' Claim

The Landlord is claiming \$100.00 for unpaid rent. The Landlord stated that the Tenants only sent \$2,750.00 for September 2023 rent instead of \$2,850.00. The Landlords provided a copy of the e-transfer from the Tenants showing the underpayment, as well as a copy of their bank statement showing no other transfers were received.

The Tenant stated that they sent a further \$100.00 and provided a screen shot of the transfer in support. I note that the screen shot provided by the Tenants is not dated, and does not confirm the \$100.00 was sent, as there is still the option to “send money”.

The Landlords are claiming \$220.00 for broken fridge parts. During the hearing, the Tenant consented to compensate the Landlords \$220.00 to replace the broken parts.

The Landlords are claiming \$25.74 to replace a missing garbage bin. The Tenant stated that there was no garbage bin at the start of the tenancy, therefore, they purchased their own, and took their garbage bin at the end of the tenancy.

The Landlords are claiming \$2,000.00 to repair damaged flooring in the rental unit. The Landlord stated that the rental unit is a new build and that the floor was brand new at the start of the tenancy. The Landlords provided pictures and a quote in support. The Landlord confirmed that the work has not yet taken place to repair the flooring.

The Tenant stated that they notified the Landlords of the issue with the flooring lifting on November 8, 2022. The Tenant stated that they did not receive a response from the Landlords until the new year. The Tenant stated that there were other concerns with moisture in the rental unit such as water dripping down the walls from the windows. The Tenant stated that the Landlords were unresponsive to the Tenants' concerns of moisture in the rental unit.

The Landlords are claiming \$266.47 in relation to a late fee they paid on their property taxes as the Tenants did not notify the Landlords that there was mail for them at the rental unit, resulting in the Landlord not being aware that the overdue tax notice was issued to them. The Tenant stated that they were no longer occupying the rental unit when the notice would have come out.

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

The Tenants Claim

The Tenants had applied for the return of their security by direct request, however, since the Landlords had already applied to retain the Tenants' security deposit, the applications were crossed and will both be considered in this Decision. If successful, the Tenants are seeking the return of their filing fee.

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 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.

The Landlord's Claim

The Landlord is claiming \$100.00 for unpaid rent. While the Tenant stated that they paid this extra \$100.00, I find the evidence submitted by the Tenants does not confirm the transfer was completed. Instead, I find the Landlords submitted sufficient evidence to demonstrate that they did not receive further payments from the Tenants. As such, I find the Landlords are entitled to compensation in the amount of **\$100.00** for unpaid rent.

The Landlords are claiming \$220.00 for broken fridge parts. During the hearing, the Tenant consented to compensate the Landlords \$220.00 to replace the broken parts. As such, I award the Landlords compensation in the amount of **\$220.00**.

The Landlords are claiming \$25.74 to replace a missing garbage bin. I find that the Landlords provided insufficient evidence to demonstrate that there was a garbage bin in the rental unit at the start of the tenancy. As such, I find that they have provided insufficient evidence to demonstrate that they have suffered a loss. I dismiss this claim without leave to reapply.

The Landlords are claiming \$2,000.00 to repair damaged flooring in the rental unit. The Landlord confirmed that the work has not yet taken place to repair the flooring. I find the Landlords have not demonstrated a loss as they have not yet completed the work to repair the flooring. As such, I dismiss this claim without leave to reapply.

The Landlords are claiming \$266.47 in relation to a late fee they paid on their property taxes as the Tenants did not notify the Landlords that there was mail for them at the rental unit, resulting in the Landlord not being aware that the overdue tax notice was issued to them. I find that it is not the Tenants' responsibility to provide the Landlord with their mail. I find the Landlords could have mitigated their loss by having their mail sent to their address for service, or else they could have checked the mailbox at the rental unit if they were expecting property tax information. 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.

In summary, I find the Landlords have demonstrated an entitlement to a monetary award of \$420.00.

The Tenants' Claim

With respect to the Tenants' claim for recovery of their security deposit, 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.

In this case, the Tenants provided insufficient evidence to confirm that they provided their forwarding address in writing to the Landlords prior to the move out condition inspection date on October 5, 2023, which was later than the end of the tenancy.

Therefore, pursuant to section 38(1) of the *Act*, the Landlords had until October 20, 2023, to repay the deposit or make a claim against it. I find that the Landlords submitted their Application on October 5, 2023, 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 filling fee.

The Landlords have established an entitlement to monetary compensation in the amount of \$420.00. I accept that the parties agreed that the Landlords continue to hold the Tenants' security deposit in the amount of \$1,350.00. I find that the Tenants' security deposit has accrued interest in the amount of \$34.10, bringing the value of the Tenants' security deposit held by the Landlords to $(\$1,350.00 + \$34.10 = \$1,384.10)$.

I find it appropriate in the circumstances to order that the Landlords retain \$420.00 from the \$1,384.10 security deposit held in satisfaction of the claim $(\$1,384.10 - \$420.00 = \$964.10)$

Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$964.10, which represents the remaining balance of their security deposit less the previously mentioned deductions.

Conclusion

The Landlords have established an entitlement to monetary compensation in the amount of \$420.00 which has been deducted from the security deposit. The Tenants are granted a monetary order in the amount of \$964.10 which represents the remaining balance of the Tenants' security 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: March 16, 2024