



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary award and for an order to retain the security deposit. The hearing was conducted by conference call. The landlord's representatives called in and participated in the hearing. The tenant did not attend, although he was personally served with the application and Notice of Hearing on June 16, 2015 as set out in a supplied affidavit of service sworn June 17, 2015.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

The rental unit is the upper portion of a house in North Vancouver. The tenancy began in December, 2013 and it was renewed for a further one year fixed term commencing July 1, 2014. Monthly rent in the amount of \$3,800.00 was payable on the first of each month. The tenant paid a security deposit of \$1,750.00 on November 7, 2013.

The tenant gave notice to end the tenancy by email and later in writing and moved out of the rental unit on December 31, 2015. The landlord succeeded in re-renting the unit at a lower rent commencing February 1, 2015. The tenancy agreement contained a liquidated damage clause whereby the tenant was responsible for payment of liquidated damages in the amount of \$1,750.00 in the event that the tenant ended the tenancy before the expiry of the fixed term. The liquidated damage amount was intended to compensate the landlord for the costs of re-renting the unit for the remainder of the term.

The landlord's representatives testified that the rental unit was not properly cleaned at the end of the tenancy and claimed amounts for cleaning and unpaid utilities in addition

to loss of rental income and liquidated damages. The landlord has claimed the following amounts:

• Cleaning charges as stated by invoice:	\$388.50
• Pool fees, as set out by email confirmation:	\$600.00
• Unpaid utilities:	\$1,631.86
• Loss of rental income for January:	\$3,800.00
• Liquidated damages, as provided by agreement:	\$1,750.00
Total:	\$8,170.36

The landlord submitted an invoice for cleaning the rental unit in the amount of \$388.50.

The landlord's representatives testified that, as set out in an e-mail exchange, the tenant agreed to pay swimming pool maintenance charges of \$100.00 per month for months the pool was used. The landlord did not submit any invoices for pool maintenance charges and did not submit information to show when the pool was used.

The tenancy agreement provided that the tenant would be responsible for payment of 70% of the utility bills exceeding a cap of \$300.00 per month for the rental property. The landlord submitted copies of the utility bills and a table provided to show the calculation of the charges.

Analysis

The landlord has established that the tenant moved out of the rental unit without providing proper notice, in breach of the fixed term tenancy agreement. I find that the landlord acted properly to mitigate its damages by successfully re-renting the unit to new tenants commencing February 1, 2015. The landlord is entitled to loss of rental income for January in the amount of \$3,800.00. The landlord is also entitled to liquidated damages for the costs of re-renting the unit as claimed, in the amount of \$1,750.00.

I accept the landlord's calculation of the amounts due for a percentage of utility charges that exceeded the monthly cap of \$300.00. I allow the landlord's claim in the amount of \$1,631.86.

I do not allow the landlord's claim for pool fees because, apart from an e-mail exchange, the landlord has not provided evidence to establish that the pool was actually used or to

show that there were any actual expenditures for pool maintenance. This portion of the landlord's claim is dismissed without leave to reapply.

The total award to the landlord is the sum of \$7,570.36. The landlord is entitled to recover the \$100.00 filing fee for this application, for a total award of \$7,670.36.

Conclusion

The landlord has been granted a monetary award of \$7,670.36. I order that the landlord retain the security deposit of \$1,750.00 in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$5,920.36. This order may be registered in the Small Claims Court and enforced as an order of that court.

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 13, 2015

Residential Tenancy Branch

