



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 hearing was convened by way of conference call in response to the landlords' application for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlords to the tenants, was done in accordance with section 89 of the *Act*; served by registered mail on July 28, 2015. Canada Post tracking numbers were provided by the landlords in evidence. The tenants are deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord JC appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the landlords permitted to keep all or part of the security deposit?

Background and Evidence

The landlord testified that this tenancy was due to start on July 01, 2015 for a fixed term tenancy until July 01, 2016. Rent for this unit was agreed to be \$1,350.00 per month plus \$150.00 per month for utilities. Rent was due on the 1st of each month. The landlords have provided a copy of the tenancy agreement in documentary evidence. This agreement has been signed by both parties.

The landlord testified that the tenants paid \$500.00 in cash towards the first month's rent and provided two cheques for the balance of rent, the security and the pet deposit. The move in condition inspection was conducted with the tenants and they were due to rent the lower suite. At the time the tenancy agreement was signed he landlords had rented the upper suite to a family; however, that family changed their mind and these tenants were notified hat the upper site had been rented to three students.

The tenants were due to move in on July 01, 2015; however, they did not take possession of the rental unit and on July 02, 2015 the tenants sent the landlords an email stating that they were not going to be moving in as they only wanted to live with a family upstairs and not students. The tenants stated that this was a material breach of the tenancy agreement.

The landlord testified that there is no mention of who will be living in the upper unit in the tenancy agreement and so they corresponded with the tenants via email to try to resolve this matter. They notified the tenants that they must give the landlords written notice to end the tenancy and the landlords would accept short notice. If the landlord

could re-rent the unit for a date in July the landlords were willing to prorate the rent for July. The tenants did not provide written notice. The landlords advertised the unit and managed to re-rent the unit for July 28, 2015.

The landlord testified that the tenants put a stop on both cheques provided for the rent and security and pet deposits. The landlord referred to the clause in the tenancy agreement which indicates that a fee of \$25.00 will be charged for each returned cheque.

The landlord also referred to a clause in the tenancy agreement that states liquidated damages of \$500.00 will be charged if the tenants end the tenancy prior to the end of the fixed term. The landlords have provided a breakdown of their time taken to deal with the tenants' breach of the tenancy agreement and to get the rental unit re-rented.

The landlord testified that as they still hold \$500.00 for July's rent and received three days rent from the incoming tenants from July 28 of \$130.64, the landlords now seek to recover the balance of lost rent of \$719.36 from the tenants. The landlords also seek to recover the liquidated damages of \$500.00 because the tenants ended the tenancy, \$50.00 for returned cheque fees, and the filing fee of \$50.00.

Analysis

The tenants did not appear at the hearing to dispute the landlords' claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have carefully considered the landlords' documentary evidence and sworn testimony before me.

I refer the parties to s. 45(2) of the *Act* which states:

(2) 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.

The tenancy agreement does show that this was a fixed term tenancy until July 01, 2016; the tenants effectively ended the tenancy on July 02, 2015. Despite the tenants' arguments to the landlord via email, the tenants have no control over who the landlord may rent the upper unit to, there is no mention of their preference for a family to live upstairs in the tenancy agreement and as such cannot consider this to be a material breach of the tenancy agreement by the landlords if the tenants living upstairs are not to the tenants liking. Consequently, the tenants are responsible for rent for the unit to either the legal end of the tenancy or the date the landlords re-rent the unit after receiving notice to end the tenancy from the tenants.

The landlords did manage to re-rent the unit for July 28, 2015 and as such I find the landlords are entitled to recover a loss of rent from July, 01 to July 27, 2015. The tenants did pay \$500.00 for July and therefore the landlords have established a claim to recover the amount of **\$719.36**.

With regard to the landlords' claim for liquidated damages of \$50.00; in order for a liquidated damages clause to be upheld, two conditions must be met. First, the amount of the damages identified must roughly approximate the damages likely to fall upon the party seeking the benefit of the term. Second, the damages must be sufficiently uncertain at the time the contract is made that such a clause will likely save both parties the future difficulty of estimating damages. I am satisfied that the term in the tenancy agreement is a genuine pre-estimate of the costs to re-rent the unit, while this may not

involve costs to advertise the unit there is an amount of time involved in developing an advertisement, responding to inquiries, showing a unit and setting up a new tenancy. It is my decision that the sum of **\$500.00** for liquidated damages is an acceptable amount to re-rent the unit.

With regard to the landlords' claim for the returned cheques; I refer the parties to rule 7 of the Rules of Procedure which states:

(1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I have reviewed the tenancy agreement and find there is a clause contained in the agreement that provides for returned cheques. Consequently, pursuant to s. 7(1)(d) of the Regulations I find the landlord is entitled to recover **\$50.00** for two returned cheques.

As the landlords' claim has merit I find the landlords are entitled to recover the **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlords pursuant to s. 67 and 72(1) of the *Act* as follows:

Loss of rent for July, 2015	\$719.36
Liquidated damages	\$500.00
Returned cheque fees	\$50.00
Filing fee	\$50.00
Total amount due to the landlord	\$1,319.36

As the tenants did not pay either a security deposit or a pet deposit then I am not required to deal with the landlords claim for either of these deposits.

Conclusion

I HEREBY FIND in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$1,319.36**. The Order must be served on the respondents. Should the respondents fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: January 14, 2016

Residential Tenancy Branch

