



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlords served the tenants with the original notice of hearing package via Canada Post Registered Mail on December 19, 2015. Both parties also confirmed that the landlords served the tenants with the amendment to an application for dispute and the submitted documentary evidence via courier on June 29, 2016. The tenants did not submit any documentary evidence. As both parties have attended and have confirmed receipt of the notice of hearing package, the amendment to an application for dispute and the submitted documentary evidence, I am satisfied that both parties have been properly served as per sections 88 and 89 of the Act.

Preliminary Issue(s)

At the outset the landlords clarified that they were seeking a monetary claim for the loss of rental income of \$1,098.02 for the pro-rated 23 days after the tenant vacated the rental unit on December 7, 2015. The landlords also claimed the additional amount of \$216.31 for unpaid utilities for a total of \$1,414.33 as compensation as shown in the filed amended application for dispute resolution.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that this tenancy began on October 7, 2013 on a fixed term tenancy ending on October 6, 2014 and then thereafter on a month-to-month basis as per a signed tenancy agreement. The monthly rent was \$1,480.00 payable on the 7th day of each month. A security deposit of \$740.00 and a pet damage deposit of \$740.00 were paid on October 7, 2013.

Both parties confirmed that the tenants provided notice to vacate the rental premises on November 19, 2015 for December 1, 2015(12 days' notice). Both parties also confirmed that the tenants provided their forwarding address in writing for the return of the security and pet damage deposits on December 1, 2015 when possession was returned to the landlords.

The landlords seek an amended monetary claim of \$1,314.33 which consists of:

\$954.80	Loss of Rental Income (December 1-31, 2015)
\$158.30	Utility Arrears, Corp. of Summerland
\$98.34	Vacant House Utilities, Corp. of Summerland
\$52.89	Vacant House Utilities, Fortis
\$50.00	Recovery of Filing Fee

The landlord clarified that this is for loss of rental income for the month of December 2015 (from December 1, 2015 to December 31, 2015) as the tenants failed to provide proper notice and that the landlord was unable to re-rent the premises until January 1, 2016. The landlords stated that they immediately began to advertise the rental unit on November 20, 2015 as shown by a copy of the invoice for online ads from Castanet dated November 20, 2015. The landlord states that they were not able to re-rent the rental premises until January 1, 2016. The tenants disputed this stating that the landlords informed them that a new tenancy would take effect as of December 5, 2015. The landlords provided testimony that a tenant was found, but before a new tenancy agreement could be signed by both parties, the prospective tenant withdrew their interest and that the "tenancy fell through". The landlords re-confirmed they were unable to re-rent the unit until January 1, 2016.

The landlords also seek compensation for recovery of utility costs as the tenants failed to pay all of their utilities as shown by the submitted copies of emails from the local municipality, District of Summerland Utility Invoices, a letter from the District of

Summerland dated February 2, 2016 showing no payments received from the tenants, and a copy of a Fortis Invoice for a Final Notice.

The landlords also seek recovery of utility costs for the house when it was vacant during December 2015.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, the landlords have provided undisputed affirmed evidence that the tenants provided 12 days' notice on November 19, 2015 to vacate the premises on December 1, 2015. The landlords have provided undisputed affirmed evidence that they immediately began to advertise the premises for rent. Both parties confirmed that the landlord was able to find a new tenant for December 5, 2015. The landlords provided undisputed affirmed evidence that the "tenancy fell through" and that a new tenant was not secured until January 1, 2016. The tenants have disputed that this was not their fault. I accept the evidence of both parties and find on a balance of probabilities that the landlords were not able to secure a new tenant for December 5, 2015 as indicated to the tenants. The landlords were able to secure a new tenancy with a signed tenancy agreement for January 1, 2016. As such, I find that the landlords have established a claim for loss of rental income of \$954.80 as claimed.

As for the landlords' monetary claim for unpaid utilities of \$158.30, I find as the landlord has provide undisputed affirmed evidence that the tenants failed to pay the utilities while they had possession of the rental premises that the landlords have established their claim for this portion of the application.

As for the landlord's claim for utilities of \$98.34 and \$52.89, I find that the landlords have failed. The tenancy having ended on December 1, 2015, the tenants' would no longer be responsible for utilities incurred after the landlords took possession. This is a cost that the landlord would have assumed automatically if the tenancy ended normally. As such, this portion of the landlords claims are dismissed.

The landlords have established a total monetary claim of \$1,113.10.

The landlords are also entitled to recovery of the \$50.00 filing fee.

The landlords applied to keep the tenants' security and pet damage deposits. I allow the landlord to retain \$1,163.10 from the combined security and pet damage deposits of \$1,480.00 in satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$316.90 under the following terms:

Item	Amount
Landlords' Monetary Award	\$1,113.10
Recovery of Filing Fee	50.00
Offset Security/Pet Damage Deposits	-1,480.00
Total Monetary Order	(\$316.90)

The tenant is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as orders 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: July 20, 2016

Residential Tenancy Branch

