



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 matter dealt with an application by the Landlord for a Monetary Order for unpaid rent or utilities, for compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on July 17, 2016. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are there rent or utility arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent or utilities and if so how much?
3. Are there other losses or damages and is the Landlord entitled to compensation?
4. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on December 1, 2015 as a fixed term tenancy with an expiry date of November 30, 2017. Rent was \$1,250.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$625.00 on December 1, 2015. The Landlord said the Tenants moved out of the rental unit on June 30, 2016 as a result of a Notice to End Tenancy and the Tenants giving the Landlord notice on June 2, 2016 that they were moving out on June 30, 2016. A move in condition inspection report was completed by the Tenant but not signed by the Landlord and no move out condition inspection report was completed. The Tenant and the Landlord both said a mutually agreeable time was not worked out for the move out condition inspection report so it was not completed.

The Landlord said that the Tenant did not pay \$147.18 of utilities for June, 2016, before moving out. This was partially due to the utility bills for June, 2016 coming in July, 2016. The Landlord said the Tenants were responsible for 60% of the hydro and gas utilities and he submitted copies of the bills with the 60 % calculation on them. The Landlord said he is requesting reimbursement for utilities that he has paid in the amount of \$147.18.

The Tenant said she believes they paid part of the utilities already but she could not get the cheques or receipts submitted for the hearing. The Tenant said she has no evidence at this time for payment of utilities for June, 2016.

Further the Landlord said he had a latch on a patio door repaired at a cost of \$39.20. The Landlord said this was not normal wear and tear that broke the door handle.

The Tenant said the move in condition inspection report shows the door latch to be in need of small repair and the Landlord did not repair the latch and it broke due to normal wear and tear.

The Landlord continued to say that he spent 2 to 3 hours cleaning the unit after the Tenants left and is claiming \$60.00 for his time. The Landlord said he submitted photographs to support his claim.

The Tenant said she cleaned the rental unit before leaving and she submitted pictures of the cleaned unit on move out. The Tenant continued to say that because the Landlord did not do a move out condition inspection report he has no proof of the condition of the unit at the end of the tenancy. The Tenant said the Landlord's claim for \$60.00 should be dismissed.

Further the Landlord said he is claiming liquidated damages of \$1,250.00 which is in the tenancy agreement and was discussed with Tenants and agreed to by Tenants at the start of the tenancy. The Landlord said he lost approximately ½ month's rent of \$650.00 because of the late notice to end the tenancy by the Tenants and his re-renting cost are \$600.00 for his time to show and advertise the property.

The Tenant said that she did agree to the liquidated damages clause in the tenancy agreement but she thought it only applied in different circumstances. The Tenant said the Landlord was trying to evict them so they move out.

The Landlord said the Tenant broke the fixed term tenancy agreement therefore the liquidated damages clause is in effect.

The Tenant said in closing this tenancy was a terrible experience. She believes the Landlord's claims are not valid as the liquidated damages should not be in effect as the Landlord wanted to end the tenancy, the Landlord advertised the rental unit before they moved out and when he rented the unit the rent went up from \$1,250.00 to \$1,400.00.

As well the Tenant said the Landlord has not proven an actual loss, nor has he verified it or mitigated the loss. The Tenant said it is her understanding the Landlord has to prove these things in order to be successful. The Tenant said the Landlords application should be dismissed.

The Landlord said in closing the liquidated damages is in the contract and the Tenants broke the contract therefore the Tenants are responsible for liquidated damages of \$1,250.00. As well the part of the tenancy agreement was to pay utilities and the Tenants have unpaid utilities of \$147.18 which the Landlord has documented. Further the Tenants did not clean the unit properly and they broke a latch on a door.

The Arbitrator offered the parties an opportunity to settle this matter. The Tenant said they were not interested in a settlement as they had tried that before. The Landlord said he would be open to a settlement. No settlement proposal was explored.

Analysis

Section 46 (6) of the Act says: If

- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and
 - (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,
- the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

I find the Landlord has given the Tenants formal notice of the unpaid utilities in the Landlord's application package.

Section 26 says a tenant must pay rent or utilities when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent or utilities.

I accept the Landlord's calculations of unpaid utilities therefore the Tenants do not have the right under the Act to withhold part or all of the utilities. I find the Tenants are responsible for the unpaid utilities as calculated by the Landlord in the amount of \$147.18.

Section 23 and 35 of the Act say that a landlord and tenant must do condition inspection reports to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit.

In this situation both the Tenant and the Landlord have contradictory testimony and photographs. The Landlord says the unit was left unclean and the door latch was broken. The Tenant says the unit was left clean and the door latch was broken at the start of the tenancy. The Act says condition inspection reports are to be done so that there is agreement on the condition of a unit at the start and end of a tenancy. As no condition inspection reports were completed according to the Act or regulations; I find the Landlord is unable to establish the condition of the rental unit at the start and end of the tenancy. Consequently, I dismiss without leave to reapply the Landlord's application for cleaning of \$60.00 and for the damage to the door latch of \$39.20.

With regard to the liquidated damages of \$1,250.00 I accept both the Landlord and the Tenants testimony that the liquidated damages clause was discussed and agreed to at the start of the tenancy. Further I accept that the Landlord lost rental income for the month of July, 2016 in the amount of \$650.00 due to the Tenants breaking the fixed term tenancy agreement. The Tenants broke the fixed term tenancy agreement when they gave the Landlord notice on June 2, 2016 that they were moving out of the unit on June 30, 2016. A fixed term tenancy does not end until the expiry date in the tenancy agreement which in this case is November 30, 2017 or with a **written** Mutual Agreement to End Tenancy signed by both the Landlord and the Tenants. I award the Landlord \$650.00 in liquidated damages for lost rental income for July, 2016.

As well I accept the Landlord has incurred \$600.00 of expenses and for his time in re-renting the property. I award the Landlord the balance of the liquidated damages in the amount of \$600.00 for these costs. The Landlord has been successful in his request for liquated damages in the amount of \$1,250.00.

As the Landlord has been partially successful in this matter, the Landlord is also entitled to recover from the Tenants the \$100.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit in partial payment of unpaid utilities and lost rental income. The Landlord will receive a monetary order for the balance owing as following:

	Utility arrears:	\$ 147.18
	Liquidated damages	\$ 1,250.00
	Recover filing fee	\$ 100.00
	Subtotal:	\$1,497.18
Less:	Security Deposit	\$ 625.00
	Subtotal:	\$ 625.00
	Balance Owing	<u>\$ 872.18</u>

Conclusion

A Monetary Order in the amount of \$872.18 has been issued to the Landlord. A copy of the Order must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: August 31, 2016

Residential Tenancy Branch