



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNR, MNDC, MND, FF

Introduction

This hearing convened as a result of the Landlord's Application for Dispute Resolution wherein the Landlord requested monetary compensation in the amount of \$8,536.76 for unpaid rent, damage to the rental unit, money owed or compensation for loss, authority to retain the Tenants' security deposit and to recover the filing fee.

Only the Landlord's managing broker, T.V., at the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

T.V. testified she served each Tenant individually with the Notice of Hearing and their Application on August 9, 2016 by registered mail. T.V. further confirmed that, although they did not provide a forwarding address in writing as required by the *Residential Tenancy Act*, she sent the registered mail packages to the rental unit as the Tenants advised her their mail was being forwarded from the rental unit to their new address. She also stated that the Tenant, H.V. later provided a forwarding address to which another registered mail package was sent such that H.V. received two packages. T.V. testified that to her knowledge none of the registered mail packages had been returned to the Landlord.

Residential Tenancy Policy Guideline, "12. Service Provisions" provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Under the Act documents served this way are deemed served five days later; accordingly, I find the Tenants were duly served as of August 14, 2016 and I therefore proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. What should happen with the Tenants' security deposit and pet damage deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the "Lease Agreement" providing that this one year fixed term tenancy began on June 1, 2016 and was to end of May 31, 2016. Monthly rent was payable in the amount of \$2,100.00 payable on the first of the month. Pursuant to paragraph 1.2 of the Lease Agreement, the Tenants were responsible for paying their own utilities. The Tenants paid \$1,050.00 for a security deposit and \$1,050.00 for a pet damage deposit which was paid on April 19, 2015.

T.V. testified that the Tenants vacated the rental unit on or about April 22, 2016 after leaving a message with the Landlord stating that they had moved out and left the keys on the counter.

The Landlord performed a move in condition inspection, which was provided in evidence. T.V. testified that the Tenants did not participate in the move out inspection as they vacated the rental unit without proper notice, and did not give a forwarding address. A copy of the move out inspection report was provided in evidence and confirmed that the rental unit was left significantly damaged and dirty.

T.V. testified that despite their voicemail message, the Tenants failed to return the keys to the rental unit such that the locks had to be rekeyed. Introduced in evidence was a copy of an invoice dated May 2, 2016 relating to rekeying the four locks to the house.

T.V. further testified that major cleaning was required. This is also noted on the move out condition inspection. Introduced in evidence was a copy of the invoice dated May 2, 2016 in the amount of \$600.00. T.V. confirmed that the rate charged by the cleaner was \$25.00 per hour.

T.V. testified that the Tenants failed to clean the carpets as required and accordingly the Landlord sought the sum of \$420.00 for cleaning the carpets. Also introduced in evidence was a copy of the invoice for this carpet cleaning, dated May 5, 2016.

Two detailed invoices were introduced by C.C. Ltd. for rubbish removal and repairs to the rental unit totalling \$2,004.29. T.V. testified that the damage to the rental unit was extensive, and stated that the Tenants put up walls, took down walls, damaged other existing walls and the ceiling, as well as removing tiles in the kitchen.

T.V. further testified that the Tenants failed to pay the April 2016 rent, and moved out of the rental unit without providing the Landlord with proper notice such that the Landlord was not able to rent the unit for May 1, 2016. Fortunately the Landlord was able to re-rent the unit as of May 9, 2016, such that the Landlord only sought \$2,100.00 for the April 2016 rent and \$245.20 for loss of rent for May 2016.

In the within hearing the Landlord sought compensation for the following:

Rekey	\$157.50
Cleaning	\$600.00
Carpets	\$420.00
Rubbish removal and repairs	\$2,004.29
Utilities	*\$310.88
April rent	\$2,100.00
May rent	\$245.20
Carpet	*\$2,028.19
TOTAL	\$8,355.63

*note, these figures are less than the amounts claimed on the original application and T.V. provided copies of the invoices to correspond with the lower amounts.

Analysis

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 37 of the *Act*, mandates the condition in which a Tenant should leave the rental unit as follows:

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

After careful consideration of the undisputed testimony and evidence before me and on a balance of probabilities, I find that the condition in which the rental unit was left by the Tenants breached section 37. I accept T.V.'s testimony and the evidence filed that the rental unit was not cleaned and was significantly damaged by the Tenants. The move out condition inspection report sets out in detail the substantial deficiencies caused by the Tenants' actions and/or neglect.

I accept the Landlords' evidence and find that the Tenants failed to return the keys to the rental unit such that the locks needed to be rekeyed.

I also find that the rental unit was not cleaned as required by the Act and the tenancy agreement such that the Landlord incurred the cost to remove the Tenants' rubbish, clean and repair the unit as a whole, and clean and replace the carpets due to their condition in some rooms.

I also find that the Tenants failed to pay rent as required for April 2016 and gave insufficient notice to end their tenancy such that the Landlord also suffered a loss of rent for some portion of May 2016. As this was a fixed term tenancy the Tenants were potentially liable to pay rent for the balance of the term. Fortunately, the Landlord was able to quickly make the necessary repairs and clean the unit and rent it within a short time after the Tenants vacated the rental unit thereby minimizing this loss.

The tenancy agreement provided that the Tenants were responsible for paying for the utilities. I find that the Tenants vacated the rental unit leaving utilities outstanding

I find the Landlord is entitled to recovery of the amounts claimed as well as recovery of the filing fee. For greater clarity I find the Landlord is entitled to the sum of **\$8,455.63** for the following:

Cost to rekey four locks	\$157.50
Cost to clean the rental unit	\$600.00
Cost of carpet cleaning	\$420.00
Rubbish removal and repairs	\$2,004.29
Outstanding utilities	\$310.88
Unpaid rent for April 2016 rent	\$2,100.00
Loss of rent for May 2016	\$245.20
Cost to replace carpet	\$2,028.19
Recovery of filing fee	\$100.00
TOTAL	\$8,455.63

Pursuant to section 38(4)(b) I authorize the Landlord to retain the Tenants' security deposit in the amount of \$1,050.00 as well as the Tenants' pet damage deposit in the amount of \$1,050.00 towards the amounts awarded and I grant the Landlord a Monetary Order in the amount of **\$6,355.63** for the balance due. This Monetary Order must be served on the Tenants and may

be filed and enforced in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

Conclusion

The Landlord is awarded \$8,455.63 in compensation for loss of rent, damage to the rental unit and compensation for loss under the *Residential Tenancy Act*, the *Residential Tenancy Regulation* and the tenancy agreement, as well as recovery of the filing fee. The Landlord may retain the Tenants security and pet damage deposit in the total amount of \$2,100.00 and is granted a Monetary Order for the balance due of **\$6,355.63**.

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 25, 2016

Residential Tenancy Branch