



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- 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 undisputed affirmed testimony. Both parties confirmed that the landlords served the tenants with the notice of hearing package via Canada Post Registered Mail on December 18, 2015 then again on May 9, 2016. Both parties also confirmed receipt of the submitted documentary evidence provided by the other party. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served as per section s88 and 89 of the Act. Both parties are deemed served as per section 90 of the Act.

The hearing commenced as scheduled but was unable to be completed on this date. As both parties have filed extensive supporting documentation, an adjournment is required for more time to complete the hearing. The continuation date of this hearing will be mailed along with this Interim Decision.

The hearing is adjourned. Both parties were cautioned that no further evidence would be accepted and that neither party may submit any further evidence.

On November 10, 2016 the hearing was reconvened with both landlords in attendance. The tenant or her agent did not attend. I waited until 8 minutes past the start of the scheduled hearing time before restarting the hearing. After 39 minutes past the start of the hearing time the reconvened hearing was concluded in absence of the tenant.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent, for damage to the rental unit, for money owed or compensation for damage or loss and recovery of the filing fee?
Are the landlords entitled to retain all or part of the security deposit?

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.

This tenancy began on September 1, 2015 on a fixed term tenancy ending on September 1, 2016 and then thereafter on a month-to-month basis. The monthly rent was \$3,300.00 payable on the 1st day of each month. A security deposit of \$1,650.00 was paid on August 14, 2015. A condition inspection report for the move-in and the move-out were completed by both parties. Both parties confirmed that the tenant provided his notice to vacate the rental unit via email on October 23, 2015 for November 30, 2015. Both parties confirmed that the tenant provided his forwarding address via email on December 6, 2015.

The landlords seek a monetary claim of \$21,007.98 which consists of:

\$11,550.00	Loss of Rental Income from December 1, 2015 to March 15, 2016 (\$3,300.00 X 3.5 months)
\$684.98	Fortis Utilities (September 1, 2015 to March 15, 2016)
\$162.53	Hydro Utilities (September 1, 2015 to March 15, 2016)
\$6,000.00	
	\$2,650.00 Late Fees, December 1, 2015 to March 15, 2016
	\$1,875.00 Late Fees, January 1 to March 15, 2016
	\$1,100.00 Late Fees, February 1 to March 15, 2016
	\$375.00 Late Fees, March 1 to March 15, 2016
\$1,650.00	Admin. Fee to Re-Rent Suite
\$726.60	
	\$525.00 Estimated Replacement of cabinets
	\$201.60 Estimated Install of cabinets
\$250.00	JOW construction, miscellaneous repairs
\$26.14	Paint
\$248.06	UrbanPro, Cleaning
\$117.67	Vancouver Sun, Advertising

The landlords also stated that the tenant has been pre-paying \$136.00 per month as part of their rent for the utilities which would have been adjusted. The landlords stated that the tenant had a \$408.00 credit to be applied against the utilities after dividing them amongst all of the tenants.

The landlords provided affirmed testimony in which the tenant had prematurely ended the tenancy on November 30, 2015 prior to the end of the fixed term of September 1, 2016. The landlords stated that upon being notified on October 23, 2015 via email by the tenant, they immediately began advertising the rental unit to be re-rented. The landlords stated that with numerous ads placed online (craigslist, kijiji) and in the Vancouver Sun a new tenant was not found until March 15, 2016. As such, the landlord seeks recovery of lost rental income for the 3 ½ month period between December 1, 2015 and March 15, 2016 of \$11,550.00 @ \$3,300.00 per month. The tenant disputed this claim but confirmed that he did give notice to end the tenancy and that he was breaching the signed tenancy agreement. The tenant stated that 14 prospective tenants were shown the rental unit of which 7 were interested in renting it. The tenant states that the landlord refused them all either for having children or pets. The tenant states that because of this the rental unit was not re-rented. The landlords disputed the tenant's claims stating that of those interested who had applied for tenancy, none were satisfactory.

The landlord seeks recovery of the tenants share of unpaid utilities totalling, \$684.98. The tenants dispute this claim stating that the utilities were paid. The landlords provided copies of the utility invoices for Hydro and Fortis for the period September 1, 2015 to March 15, 2015. The landlord has also provided calculations on each invoice to show the tenants 2/3 portion and the prepaid utilities. I note that the tenants provided no proof of any payments made for the utilities in excess of the prepaid amount of \$136.00 per month.

The landlords seek recovery of late fees of \$6,000.00. The landlords stated that the signed tenancy agreement provides for a late fee of \$25.00 per day. The landlords were cautioned that it was not possible to contract out of the Act and it was clarified that any late fee was not to exceed \$25.00 per month. As such, I find that this portion of the landlords claim is dismissed.

The landlords seek \$1,650.00 for an administrative fee to advertise, their time and vehicle expenses to re-rent the unit. The landlords clarified that this is a charge that they are seeking but did not incur.

The landlords provided undisputed affirmed evidence of the following expenses incurred due to the actions or neglect of the tenants causing damages or loss:

\$525.00	Estimated cost replacing kitchen cabinets
\$201.60	Estimated cost of install of new kitchen cabinets
\$250.00	Miscellaneous Repairs, ie. Window and door
\$26.14	Paint

\$248.06	Cleaning
\$117.67	Newspaper advertising

The landlords have provided copies of undisputed estimates, invoices, receipts for the above noted losses incurred due to damage caused by the tenants.

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 onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I find based upon the evidence and submissions of both parties that I prefer the evidence of the landlords over that of the tenants. The landlords submitted in support of their claim 101 pages of documentary evidence consisting of a signed tenancy agreement, a completed condition inspection report for the move-in and the move-out, copies of online advertisement of the rental unit, 14 photographs of the rental unit showing the condition of the unit at the end of tenancy, copies of utility bills, invoices and receipts for replacement and repairs as well as cleaning. The landlords have provided undisputed affirmed evidence in support of their claim. The tenants breached the fixed term tenancy by prematurely ending it. I find that the landlords were unable to successfully re-rent the unit until March 15, 2016 after reasonable efforts were made to re-rent the unit. The landlords have been successful in establishing a claim for damages and losses caused by the tenants as follows:

\$11,550.00	Loss of Rental Income from December 1, 2015 to March 15, 2016 (\$3,300.00 X 3.5 months)
\$684.98	Fortis Utilities (September 1, 2015 to March 15, 2016)
\$162.53	Hydro Utilities (September 1, 2015 to March 15, 2016)
\$726.60	
	\$525.00 Estimated Replacement of cabinets
	\$201.60 Estimated Install of cabinets
\$250.00	JOW construction, miscellaneous repairs
\$26.14	Paint
\$248.06	UrbanPro, Cleaning

\$117.67 Vancouver Sun, Advertising

The landlords have established a total monetary claim of \$13,765.98.

The landlords having been substantially successful in their application are entitled to recovery of the \$100.00 filing fee.

In offsetting the landlords claim, I authorize the landlords to retain the \$1,650.00 security deposit in partial satisfaction of the claim.

Conclusion

The landlords are granted a monetary order for \$12,215.98.

This order must be served upon the tenants. Should the tenants fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial 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: December 1, 2016

Residential Tenancy Branch