



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction and Preliminary Matter

This hearing convened as a result of a Landlords' Application for Dispute Resolution wherein the Landlords sought monetary compensation in the amount of \$21,916.00 for unpaid rent, damage to the rental unit, authority to retain the Tenant's security deposit and recovery of the filing fee.

The hearing occurred by teleconference on January 9, 2017 at 1:30 p.m. Only the Landlords' property managers, G.P. and M.W. appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

G.P. confirmed that V.R.L. is the Landlords' property manager and should not have been named on the Application for Dispute Resolution. Accordingly, I amend the Landlords' Application for Dispute Resolution pursuant to section 64(3)(c) to remove the name of the property management company.

G.P. testified they served both the Tenants with the Notice of Hearing and their Application on July 11, 2016 by registered mail to the forwarding address provided by the Tenants. M.W. testified that the male Tenant, Y.M.Z. showed her a photo of the home they purchased and the address of the home. M.W. then wrote the forwarding address on the move out condition inspection report and Y.M.Z. confirmed that was their forwarding address.

A copy of the registered mail receipt and tracking number for both packages were provided in evidence (the tracking numbers are noted on the unpublished cover page of this my Decision.) The Landlords also provide a copy of the covering letter sent to the Tenants on July 11, 2016 confirming the information which was provided in the registered mail packages.

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 *Residential Tenancy Act* documents served by registered mail are deemed served five days later; accordingly, I find the Tenants were duly served as of July 16, 2016.

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. Are the Landlords entitled to monetary compensation from the Tenants for unpaid rent and damage to the rental unit?
2. What should happen with the Tenants' security deposit?
3. Should the Landlords recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy which indicated that the tenancy began on January 10, 2014 for a year and three week period ending on January 31, 2015. Monthly rent was payable in the amount of \$5,500.00 and the Tenants paid a security deposit of \$2,750.00.

On January 20, 2016 a Notice of Rent increase was issued such that the rent was increased to \$5,649.00 as of April 1, 2016.

Also introduced in evidence was a document titled “Extension of Tenancy Agreement” dated January 20, 2016 whereby the Tenants agreed to rent the rental unit for a further one year and two month fixed term ending March 31, 2017. The agreement provided

that following March 31, 2017 the tenancy would end and the Tenants would move out of the residential unit.

Despite signing the Extension of Tenancy Agreement the Tenants moved out of the rental unit on June 30, 2016 stating that they had purchased a home.

A copy of the move out condition inspection report was provided in evidence confirming the condition of the rental unit as alleged by the Landlord.

M.W. testified that despite the Landlords' best efforts, they were not able to re-rent the rental unit until October 1, 2016. M.W. stated that they advertised the rental unit on their company website as well as other popular buy and sell websites, and social media.

The Landlords sought the sum of \$16,977.00 representing the loss of rent for July, August and September 2016.

The Landlords also sought the sum of \$600.00 representing the estimated amount of the water and sewage bill; during the hearing M.W. confirmed that the water and sewer bill was \$740.21.

M.W. testified that the laundry cabinet door as well as the door below the stove were damaged by the Tenants requiring small repairs in the amount of \$300.00. Photos of the cabinet drawer under the stove were provided in evidence support this claim.

The Landlords also sought compensation for \$365.50 for the cost of cleaning the rental unit.

M.W. testified that the Tenants failed to clean the carpets as required and according the Landlords also sought the sum of \$399.00 for cleaning the carpets.

M.W. testified that when the tenancy agreement was signed, it was the Tenants responsibility to have the yard maintained on a regular basis. She stated that the Tenants failed to maintain the yard as required, that the plants were overgrown and required pruning and that the cost to hire others to attend to the required gardening at the end of the tenancy was \$525.00.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlords have the burden of proof to prove their claim.

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.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in Part 2 of the *Act* as follows:

Leaving the rental unit at the end of a tenancy

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.

The Tenants failed to call into the hearing and as such the Landlords' application was unopposed. Based on the undisputed testimony and evidence of the Landlords' agents, and on a balance of probabilities, I find as follows.

I find the Tenants agreed, by signing the Extension of Tenancy Agreement on January 20, 2016, to a fixed term tenancy ending March 1, 2017. I further find that the Tenants agreed to pay monthly rent in the amount of \$5,659.00. I accept that the Tenants vacated the rental unit on June 20, 2016 after purchasing a home and therefore breached the fixed term tenancy.

I further accept that the Landlords made their best efforts to re-rent the rental unit and to mitigate their loss. Accordingly, I award the Landlords the **\$16,977.00** claimed for loss of rental income for July, August and September 2016.

The tenancy agreement provided that the Tenants were responsible for paying the cost of the municipal water charges. I find that at the end of the tenancy, these charges remained unpaid. On the Application for Dispute Resolution, the Landlords claimed \$600.00 as the "projected" amount. During the hearing the Landlords' agents confirmed that the actual cost of these unpaid utilities was \$740.21. I find the Tenants

knew or ought to have known the \$600.00 noted on the Application was an estimate and the amount could have been more or less. As the amount of the outstanding utility was only \$140.21 more than that claimed, I find the Landlords are entitled to compensation for the full amount of the outstanding utility bill in the amount of **\$740.21**.

The photos and move out condition inspection report confirm the rental unit was not cleaned as required. Additionally, I find the Tenants failed to attend to the yard maintenance as required by the tenancy agreement. I accept the Landlords' agent's undisputed testimony that the Landlords paid **\$365.50** for cleaning of the rental unit, **\$399.00** for carpet cleaning and **\$525.00** for yard maintenance. I award the Landlords compensation for these amounts.

I also find, based on the Landlords' agent's testimony as well as the photos submitted in evidence, that the Tenants damaged the cabinets in the kitchen and laundry room; as such, I award the Landlords the **\$300.00** claimed for their repair.

As the Landlords have been substantially successful, I also award them recovery of the \$100.00 filing fee.

In total I award the Landlords the sum of **\$19,406.71** for the following:

Rental loss for July, August and September 2016	\$16,977.00
Outstanding municipal water and sewer utility account	\$740.21
Cleaning of the rental unit	\$365.50
Carpet cleaning	\$399.00
Yard maintenance and cleaning	\$525.00
Repairs to kitchen and laundry room cabinets	\$300.00
Filing fee	\$100.00
TOTAL AWARDED	\$19,406.71

On the Monetary Orders Worksheet the Landlords added the \$2,750.00 security deposit to the amount claimed. This should have been deducted from the total as the Landlords continue to hold these funds in trust for the Tenants.

I authorize the Landlords, pursuant to sections 38 and 72(2)(b) to retain the Tenants' **\$2,750.00** security deposit as partial payment of the **\$19,406.71** awarded and I grant the Landlords a Monetary Order for the balance due in the amount of **\$16,656.71**. The Landlords must serve the Monetary Order on the Tenants and may file and enforce the Monetary Order in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Landlords are authorized to retain the Tenants' \$2,750.00 security deposit and are granted a Monetary Order in the amount of **\$16,656.71** for unpaid rent and utilities, as well as the cost of repairing and cleaning the rental unit and recovery of the filing fee.

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 13, 2017

Residential Tenancy Branch