



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MELECTRA ENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order permitting the landlord to keep all or part of the tenant's security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The parties attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the landlord permitted to retain all or part of the security and pet deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy originally started on May 01, 2014. The tenancy was renewed for a fixed term tenancy on September 01, 2015. The parties agreed on the tenancy agreement that the tenancy would end on August 31, 2016 without the option of continuing as a

month to month tenancy. Rent for this unit was \$1,725.00 per month due on the first of each month. The tenant paid a security deposit of \$862.50 and a pet deposit of \$862.50 on August 01, 2014. The parties attended the move in and the move out condition inspection and a report has been provided in documentary evidence. The tenant provided the landlord with her forwarding address in writing on September 03, 2016.

The landlord testified that the tenant failed to vacate the rental unit on August 31, 2016. The tenant still had possession of the property and the landlord saw the moving truck at the property on September 02, 2016. The move out inspection was not completed until September 03, 2016. The landlord testified that he had prospective tenants coming to view the property on September 01, 2016 but they were unable to look at it as the tenant was moving out. The landlord did not manage to re-rent the unit until September 15, 2016 to other tenants.

The landlord testified that as the tenant had not fully moved out of the unit the landlord seeks to recover half a month's rent for September, 2016 of \$862.50. The landlord requests to be permitted to keep the security deposit to cover the loss of rent. The landlord testified that he did return \$812.50 of the pet deposit to the tenant but withheld \$50.00 towards the landlord's filing fee. The landlord seeks to recover the \$100.00 filing fee.

The tenant testified that she had moved her belongings out of the unit by September 01, 2016 but agreed she still had belongings outside the unit. It was the landlord who did not do the move out inspection until September 03, 2016. The tenant agreed she did not return the keys to the landlord as the lock was broken.

The tenant testified that she knew she had to give the landlord vacant possession of the unit but when she was at the unit on September 01, 2016 her son was still in the house and his dog was very ill. The vet recommended that his dog was euthanized and so he left the house at noon and the tenant stayed until 6.30 p.m. getting everything out of the house.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

I refer the parties to the Residential Tenancy Policy Guidelines #3. This guideline provides guidance on claims for rent or loss of rent and states, in part, the following:

Section 44 of the *Residential Tenancy Act* and section 37 of the *Manufactured Home Park Tenancy Act* set out when a tenancy agreement will end. A tenant is not liable to pay rent after a tenancy agreement has ended pursuant to these provision, however if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a *per diem* basis until the landlord recovers possession of the premises. In certain circumstances, a tenant may be liable to compensate a landlord for loss of rent.

The landlord seeks to recover rent for the first 15 days of September because prospective tenants who came to view the unit could not get into the unit to look at it and the landlord rented it to different tenants for September 15, 2016. If the landlord had rented the unit for September 01, 2016 and not merely had a viewing on the unit then this would be a different matter; however, as there was not a signed tenancy agreement for new tenants to take possession of the rental unit on September 01, 2016 then the landlord cannot recover rent on the possibility that it might have been rented sometime after those prospective tenants viewed it.

Consequently, I find the tenant did overhold at the rental unit for two days and therefore the landlord is entitled to recover occupation rent on a *per diem* basis to an amount of \$57.50 a day to a total amount of \$115.00.

I order the landlord to retain this amount from the security deposit held in trust by the landlord pursuant to s. 38(4)(b).

As the landlord's application has some merit I find the landlord is also entitled to recover the filing fee of \$100.00 pursuant to s. 72(1) of the *Act* and may retain this from the security deposit also.

The parties agreed that the landlord has returned \$812.50 of the pet deposit to the tenant. The balance of the security and pet deposit must be returned to the tenant. The tenant will receive a Monetary Order for the balance of these deposits as follows:

Loss of rent for two days	\$115.00
Filing fee	\$100.00
Total amount to be retained by the landlord	\$215.00
Security and balance of pet deposit held in trust by the landlord	\$912.50
Total amount due to the tenant	\$697.50

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord is ordered to retain **\$215.50** from the security deposit.

The tenant is entitled to recover the balance of the security and pet deposit. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$697.50** pursuant to s. 67 of the *Act*. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: March 08, 2017

Residential Tenancy Branch