



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GENEW HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession because the tenant has breached an agreement with the landlord; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenant's security 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.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on March 10, 2017. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

At the outset of the hearing the landlord advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The landlord testified that this fixed term tenancy started on October 01, 2016 and was not due to end until August 31, 2017. Rent for this unit was \$1,300.00 per month due on the 1st of each month. The tenant paid a security deposit of \$650.00 on September 19, 2016. A copy of the signed tenancy agreement has been provided in documentary evidence.

The landlord testified that the tenant sent an email to the landlord in January, 2017 indicating that he was planning on moving out; however, the tenant did not give the landlord any firm dates for the move. The landlord testified that he informed the tenant that he would work with him but the tenant did not respond. On February 16, 2017 the landlord saw the tenant at the unit and the tenant indicated that he would be moving out on February 19, 2017. The tenant had paid the rent in full for February.

The landlord testified that he immediately placed adverts for the unit on two internet sites looking for a new tenant. The rent remained at \$1,300.00 per month. The unit was not re-rented until the end of March for April 01, 2017 occupancy. The landlord has provided a copy of the new tenancy agreement in documentary evidence.

The landlord testified that the unit could not be re-rented for March, 2017 and therefore the tenant is responsible for the rent. The tenant put a stop payment on his rent cheque for March and the landlord seeks to recover a loss of rent of \$1,300.00.

The landlord had applied for an NSF fee for the March rent cheque of \$5.00; however, this was withdrawn at the hearing.

The landlord testified that the tenant did attend the move out inspection on February 20, 2017, during the move out a friend of the tenants arrived to help the tenant move furniture; the tenant went off and the landlord expected the tenant to come back to finish the cleaning and the move out report but the tenant failed to do so. The landlord referred to the addendum to the tenancy which informs a tenant that if the landlord has to do the cleaning the tenant will be charged \$25.00 an hour. The landlord did some of the cleaning himself and has not charged the tenant for his labour; however, the landlord also had to engage the services of a cleaner who spent four hours cleaning in the unit. The details of the cleaning done are provided in the landlord's evidence including before and after photographs. The landlord seeks to recover the amount of \$100.00 and has provided the cleaners invoice in documentary evidence.

The landlord seeks to recover the fees incurred to advertise the unit. The landlord paid for the adverts in order to bump the advert to the top of the listings in an attempt to get the unit re-rented as soon as possible. The landlord has provided the invoices for these adverts and seeks to recover the costs of \$96.58.

The landlord testified that during the move out inspection the tenant had the waterproof mattress cover in the dryer. When this was taken out it was stained with red stains as the tenant had washed it with a red rag or towel. The landlord replaced this with a new mattress cover from stock and seeks to recover the cost of \$22.00.

The landlord testified that there were four bulbs, two in the kitchen and two in the bathroom, which required replacement. The landlord seeks to recover \$22.11 and has provided the invoice in documentary evidence.

The landlord testified that when they re-rented the unit the incoming tenant negotiated the price down by \$50.00 a month. In order to rent the unit the landlord agreed to this rent reduction. The landlord seeks to recover \$50.00 a month from the tenant up to the end of the fixed term. The landlord seeks to recover \$300.00.

The landlord requested an Order to be permitted to keep the security deposit of \$650.00 to offset against this monetary claim. The landlord also seeks to recover his filing fee of \$100.00 from the tenant.

Analysis

The tenant did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords undisputed evidence before me.

With regard to the landlord's claim to recover a loss of rent for March, 2017; I refer the parties to s. 45 (2) of the *Act* which states:

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Consequently, I find from the evidence before me that the tenant was not entitled to end the tenancy before August 31, 2017 and failed to give the landlord any written notice when he decided to end the tenancy sooner. The tenant is therefore responsible for the rent until the rental unit is re-rented, which in this case the unit was re-rented for April 01, 2017. I therefore find the landlord has established a claim to recover rent for March of **\$1,300.00**.

With regard to the landlord's claim for the difference in rent for the unexpired term of the tenancy; I direct the parties to the Residential Tenancy Policy Guidelines #3 which provides guidance on rent issues and says, in part, that the landlord may be compensated for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.

As the unit was re-rented for April 01, 2017 at \$1,250.00 this leaves a difference in the rent obtained for the remaining term of the tenancy of \$50.00 per month for five months. The landlord had claimed this difference for six months; however, I have limited his claim to **\$250.00** as there was five months difference in the rent from April to August, 2017.

With regard to the landlord's claim for cleaning the unit; I am satisfied from the evidence before me that the tenant failed to leave the rental unit responsible clean in accordance with s. 32(2) of the Act. The landlord has therefore established a claim to recover the cleaning costs of **\$100.00**.

With regard to the landlord's claim for the fees incurred to re-rent the unit; as these fees would not necessarily have been incurred had the tenant not ended the tenancy with such short notice I find the landlord has established a claim to recover the fees of **\$96.58**.

With regard to the landlord's claim to recover the cost to replace the waterproof mattress cover; I am satisfied from the evidence before me that this mattress cover was not washed correctly which caused it to discolor. As this item is included with rentals then the tenant must ensure it is suitable to be used for any incoming tenants. I find the cost to replace this mattress cover to be a reasonable cost and find the landlord has established a claim for **\$22.00**.

With regard to the cost to replace lightbulbs; a tenant is required to replace any light bulbs that burn out during a tenancy. The move out condition inspection report shows that light bulbs had not been replaced and therefore I find the landlord has established a claim to recover the costs to replace four blubs of **\$22.11**.

As the landlord's application is largely successful I Order the landlord to retain the security deposit pursuant to s. 38(4)(b) of the *Act*. The amount of **\$650.00** will therefore be offset against the landlord's monetary claim.

As the landlord's application has merit I find the landlord is also entitled to recover the filing fee of **\$100.00** from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Loss of rent for March, 2017	\$1,300.00
Difference in rent from April to August, 2017	\$250.00
Cleaning costs	\$100.00
Advertising fees	\$96.58
Mattress cover	\$22.00
Replacement blubs	\$22.11
Subtotal	\$1,790.69
Less security deposit	(-\$650.00)
Plus filing fee	\$100.00

Total amount due to the landlord	\$1,240.69
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Conclusion

I HEREBY FIND largely in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,240.69** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the respondent. Should the respondent 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: April 10, 2017

Residential Tenancy Branch