



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND; MNDC; MNR; MNSD; FF

Introduction

This is the Landlord's Application for Dispute Resolution seeking a monetary award for damage to the rental property, unpaid rent, and compensation for damage or loss under the Act, Regulation or tenancy agreement; to apply the security deposit towards her monetary award; and to recover the cost of the filing fee from the Tenants.

Both parties signed into the teleconference and gave affirmed testimony.

It was determined that the parties duly exchanged their documentary and digital evidence. Both parties also provided their documentary and digital evidence to the Residential Tenancy Branch.

Rule 3.10 of the Rules of Procedure provides, in part:

The format of digital evidence must be accessible to all parties. Before the hearing, the party submitting the digital evidence must determine that the other party and the Residential Tenancy Branch have playback equipment or are otherwise able to gain access to the evidence.

If a party is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

I was unable to access the Landlord's digital evidence and therefore it was not considered in my Decision.

Issue(s) to be Decided

Is the Landlord entitled to a monetary award pursuant to the provisions of Section 67 of the Act?
If so, may the Landlord apply the security deposit towards his monetary award?

Background and Evidence

The security deposit was disposed of in a previous dispute resolution hearing, on October 17, 2016. The Tenants were awarded compensation pursuant to Sections 38 and 67 of the Act in the amount of \$1,483.00 plus recovery of the filing fee. This compensation included return of the security deposit to the Tenants.

The Landlord gave the following testimony:

This tenancy was a fixed term tenancy, expiring April 30, 2016. The Tenants moved out of the rental unit before the end of the fixed term. Therefore the Landlord seeks liquidated damages in the amount of **\$1,000.00** pursuant to a term in the tenancy agreement.

The Landlord testified that the Tenants were supposed to move out of the rental unit on January 31, 2016, and that he had re-rented the rental unit effective February 1, 2016; however, the Tenants were not finished cleaning the rental unit on January 31, 2016. He stated that the “new occupant” decided not to move into the rental unit because it was dirty and the Tenants swore at the Landlord in front of the “new occupant”, telling them that he was “the worst Landlord”. The Landlord stated that he re-rented the rental unit effective March 1, 2016. The Landlord seeks loss of revenue for the month of February, 2016, in the amount of **\$1,815.00**.

The Landlord stated that the Tenants did not properly clean the rental unit. He seeks compensation in the amount of **\$288.75** for housecleaning.

The Landlord stated that the Tenants did not pay their share of the utility bills, which was 65% of the total utilities. He seeks a monetary award for their share of unpaid utilities, as follows:

Hydro bills	\$336.17
Utility bills (water, sewer, garbage)	\$244.10
Interest on unpaid bills for 9 months	<u>\$123.84</u>
TOTAL	\$704.11

The Landlord provided 58 pages of documentary evidence, which included:

- written submissions
- a monetary order work sheet
- a copy of the tenancy agreement
- advertisements for rent of the rental property
- copy of the condition inspection report
- copies of e-mails between the parties
- small colour photocopies of photographs of the rental unit
- copies of receipts
- copies of utility bills

The Tenants gave the following testimony:

The Tenants acknowledged that they ended the tenancy before the end of the fixed term, but stated that the Landlord was advised in December, 2015, that the Tenants would be moving out at the end of January, 2016. The Tenants stated that they had several open houses, took appointments for people to view the rental property, and “did all we could to re-rent”. The Tenants submitted that therefore the “\$1,000.00 for breaking a lease is unfounded”.

The Tenants testified that they thoroughly cleaned the rental unit, with the exception of cleaning the carpets, on January 31, 2016. The Tenants testified that a professional came to the rental unit on February 1, 2016, and cleaned the carpets and the outside patio deck. The Tenants provided a statement of a third party who helped to clean the rental unit, a statement from the professional carpet cleaner, and a copy of an invoice from the carpet cleaner in evidence. The Tenants also stated that they scrubbed the window sills with a tooth brush, repaired the walls, and installed a new smoke alarm on February 1, 2016. They stated that these chores were done at the request of the Landlord. Photographs of the rental unit taken at the beginning and at the end of the tenancy were included in the Tenant’s digital evidence.

The Tenants stated that the “new occupant” decided not to rent the rental unit because of structural issues which were identified by an inspection of the rental unit by a professional inspector. The Tenants provided a copy of an e-mail from the “new occupant”. The Tenants stated that the Landlord kept the “new occupant’s” security deposit and one month’s rent and therefore the Landlord did not suffer a loss of rent for the month of February, 2016. The Tenants stated that the Landlord told them that the “new occupant” had paid a security deposit, gave one year’s post-dated cheques for rent and signed a one year lease agreement. The Tenants provided a copy of an e-mail from the Landlord to the Tenants dated January 15, 2016, confirming this.

The Tenants disputed the utility costs. They stated that, contrary to the tenancy agreement, which provides that the Tenants are responsible for 65% of the hydro costs and 60% of the municipal utilities, the parties had agreed in November 2014, that the Tenants would only be responsible for 60% of both utilities. The Tenants provided copies of e-mails between the parties confirming this arrangement. The Tenants also provided a copy of a “second lease” which indicates that the Tenants would be responsible for 60% of both utilities.

The Tenants provided copies of utility bills in evidence, which are listed in the Landlord’s name. The Tenants stated that they transferred \$386.86 to the Landlord on January 15, 2016 and

\$415.83 to the Landlord on February 2, 2016 to cover outstanding utility payments. The Tenants provided copies of the transfer details. The Tenants also disputed the Landlord's claim for interest on the utilities.

The Landlord gave the following reply:

The Landlord testified that he returned the security deposit and post-dated cheques to the "new occupant" on the "3rd or 4th week" of February, 2016, because there were "lots of problems and we agreed that he would not move in". The Landlord stated that the "new occupant" was supposed to move in gradually, moving in his office first, and was claiming for hotel bills and other claims.

The Landlord stated that it was not possible for the "new occupant" to inspect the rental property without the Landlord's permission because he did not have any keys.

The Tenants gave the following reply:

The male Tenant stated that he let the "new occupant" in to do the inspection. He provided a copy of an e-mail dated January 4, 2016, from the "new occupant" to the Tenant.

Analysis

This is the Landlord's Application for Dispute Resolution and therefore it is the Landlord's responsibility to prove his claims on the civil standard, the balance of probability.

It is important to note that there are many clauses in the tenancy agreement that are contrary to the Act and are therefore not enforceable. However, I find that the clause with respect to liquidated damages is an enforceable clause. That clause provides:

Liquidated damages: If the Tenant ends the fixed term tenancy before the end of the Term as set out above, the Landlord may, at the Landlord's option, treat this Tenancy Agreement as being at an end. In such an event, the sum of \$1000.00 will be paid by the Tenant to the Landlord as liquidated damages, and not as a penalty, to cover the administration costs of re-renting the Rental Unit. The Landlord and the Tenant acknowledge and agree that the payment of liquidated damages will not preclude the Landlord from exercising any further right of pursuing another remedy available in law or in equity, including, but not limited to, damage to the Rental Unit or Residential Property and damages as a result of lost rental income due to the Tenant's breach of any term of this Tenancy Agreement.

[Reproduced as written.]

I find that the Tenants ended the tenancy before the end of the term of the lease and that the Landlord is entitled to liquidated damages in the amount of **\$1,000.00**. I do not find that this clause is a penalty clause.

Based on the evidence provided, I find that the Landlord entered into a new tenancy agreement with the “new occupant” effective February 1, 2016, and that the Landlord is not entitled to recover loss of revenue from the Tenants for the month of February, 2016. This portion of his Application is dismissed.

Section 37 of the Act requires a tenant to leave the rental unit reasonably clean at the end of a tenancy. Based on the evidence provided, I find that the Tenants left the rental unit reasonably clean and therefore dismiss the Landlord’s application for the costs of cleaning the rental unit.

I find that the Landlord did not provide sufficient evidence that the Tenants owe any outstanding utility charges. This portion of his claim is also dismissed.

The Landlord’s Application has only been partially successful and I find that he is entitled to only partial recovery of the filing fee in the amount of **\$25.00**.

The Landlord’s application to apply the security deposit towards his monetary award is dismissed, as the security deposit was dealt with in a previous dispute resolution hearing and this matter is res judicata (has already been decided).

Conclusion

I hereby provide the Landlord with a Monetary Order for service upon the Tenants, in the amount of **\$1,025.00**. This represents a monetary award for liquidated damages and partial recovery of the cost of the filing fee. This Order may be enforced in the Provincial Court of British Columbia (Small Claims 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: May 23, 2017

Residential Tenancy Branch