



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EIGHTLAND PROPERTIES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the landlord made March 01, 2017 for a Monetary Order under the *Residential Tenancy Act* (the Act), orally amended in the hearing, for damage and loss, unpaid utilities and to recover the filing fee. The application included a request for an Order allowing the landlord to retain the tenant's deposits of the tenancy in partial satisfaction of the monetary claim.

Both parties participated in the hearing. The tenant acknowledged receiving all of the evidence of the landlord and that they did not provide evidence to this matter. Each party provided testimony during the hearing. The parties were provided opportunity to mutually resolve their dispute to no avail. Prior to concluding the hearing both parties acknowledged presenting all of the *relevant* evidence that they wished to present.

The hearing proceeded on the merits of the landlord's original application subject to the landlord's oral amendments or agreement by the parties. I have reviewed all oral, written and document evidence before me that met the requirements of the Rules of Procedure. However, only the evidence *relevant* to the landlord's application and the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The following is undisputed by the parties. I have benefit of the tenancy agreement. The tenancy began May 01, 2016 and has since ended. Rent in the amount of \$1525.00 was payable in advance on the first day of each month and the parties agreed utilities were not inclusive of rent. At the outset of the tenancy, the landlord collected a security deposit and a pet damage deposit from the tenant in the respective amounts of \$750.00 and \$200.00 for a sum of \$950.00, which the landlord retains in trust. The parties agreed the landlord served the tenant with a 10 Day Notice to End tenancy for unpaid rent on February 03, 2017 by posting it to the tenant's door stating the tenant owed rent for February 2017, and utilities to that date. The tenant claims they acted on the Notice to End and consequently vacated the unit, prior to the effective date of the Notice, on February 10, 2017. The tenant acknowledged they then informed the landlord February 18, 2017 they had vacated and had left the keys. The landlord provided evidence they were then awarded an Order of Possession on their application via the direct request process in addition to a Monetary Order for the unpaid rent for February 2017. The landlord claims they did not re-rent the unit for March 01, 2017, but did so for April 01, 2017.

The parties agreed they conducted a mutual inspection of the unit at the start of the tenancy and a modified "walk through" near the end of the tenancy on February 20, 2017 in which the parties signed a hand written statement in agreement that portions of the rental unit were left unclean. The landlord provided into evidence the Condition Inspection Report (CIR) indicating the parties agreed the report fairly represented the condition of the unit at the start of the tenancy and the hand written statement of the parties in respect to the end of the tenancy.

The landlord seeks loss of rent revenue for March 2017; unpaid utilities in the amount of \$760.98, cleaning costs of \$200.00 as well as litigation related mailing costs for registered mail. The tenant agrees the landlord is entitled to the claim for utilities

totalling \$760.98 and an amount for cleaning costs for which the landlord provided a receipt in the amount of \$200.00 dated February 28, 2017.

Analysis

The full text of the Act, Regulation, and Residential Tenancy Policy Guidelines can be accessed via the RTB website: www.gov.bc.ca/landlordtenant

The landlord, as applicant, bears the burden of proving their monetary claims. I have reviewed all relevant submissions. On the preponderance of the relevant evidence I find as follows on a balance of probabilities.

I grant the landlord the agreed amount for utilities in the sum of **\$760.98**.

Section 7 of the Act provides as follows in respect to all of the landlord's claims for loss and damage made herein:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, the landlord bears the burden of establishing their claims pursuant to the test established by Section 7 above proving *the existence of a loss* and that it *stemmed directly from a violation of the agreement or a contravention of the Act on the part of the tenant*. Once that has been established, the landlord must then *provide evidence that can reasonably verify the monetary value or amount of the loss*. Finally, the landlord must show that *reasonable steps were taken to address the situation, and to mitigate or minimize a loss claimed*.

In respect to the landlord's claim for cleaning I find the landlord has effectively provided sufficient evidence the rental unit was left in part unclean and the landlord had to expend \$200.00 for cleaning. As a result I grant the landlord **\$200.00** for this portion of their application.

I find the tenancy ended when the tenant vacated February 10, 2017 pursuant to the landlord's Notice to End dated February 03, 2017. I am satisfied the landlord knew on February 18, 2017 the tenant had vacated and they had regained possession, and were obligated from that date to make reasonable efforts to mitigate losses going forward. In this case, the landlord has not provided sufficient evidence of what reasonable efforts they made to minimize their purported losses so as to meet the second part of the test established in section 7(2). As a result I must dismiss the landlord's claim for loss of revenue for March 2017.

It must be known that other than the filing fee all parties are responsible for their own litigation costs associated with the dispute resolution process. I find that the associated mailing costs claimed by the landlord are not compensable, and therefore dismissed.

As the landlord was partially successful in their application they are entitled to recover their filing fee from the tenant.

Calculation for Monetary Order is as follows:

parties' agreement: sum of utilities claimed	\$760.98
Landlord's cleaning costs	\$200.00
landlord's filing fee	\$100.00
total of landlord's monetary award	\$ 1060.98
<i>Less tenant's deposits in trust</i>	<i>- \$950.00</i>
Monetary Order for landlord	\$110.98

The landlord's application in part has been granted, and the balance dismissed.

Conclusion

I Order that the landlord may retain the tenant's security and pet damage deposits totalling \$950.00 in their entirety in partial satisfaction of their award.

I grant the landlord a **Monetary Order** under Section 67 of the Act for the balance in the amount of **\$110.98**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding.

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: August 02, 2017

Residential Tenancy Branch