



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 hearing dealt with the Landlords' Application for Dispute Resolution, dated March 10, 2017 (the "Application"). The Landlords applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, site or property;
- an monetary order for money owed or compensation for damage or loss;
- a monetary order for unpaid rent or utilities;
- an order that the Landlords be permitted to retain all or part of the pet damage deposit or security deposit; and
- an order granting recovery of the filing fee.

The Landlords were represented at the hearing by M.B., an agent, who provided affirmed testimony. The Tenant did not attend the hearing.

On behalf of the Landlords, M.B. testified the Application package was served on the Tenant by registered mail on March 16, 2017. The Application package was sent to the address of the rental unit at the Tenant's request in an email dated December 8, 2016, a copy of which was submitted with the Landlord's documentary evidence. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to have been received five days later. I find the Tenant is deemed to have received the Landlords' Application package on March 21, 2017.

M.B. was provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issues to be Decided

1. Are the Landlords entitled to a monetary order for damage to the unit, site or property?
2. Are the Landlords entitled to a monetary order for money owed or compensation for damage or loss?
3. Are the Landlords entitled to a monetary order for unpaid rent or utilities?
4. Are the Landlords entitled to an order allowing them to retain all or part of the pet damage deposit or security deposit?
5. Are the Landlords entitled to an order granting recovery of the filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted with the Landlord's documentary evidence. It confirms that a fixed-term tenancy for the period from May 1, 2016 to April 30, 2017. During the tenancy, rent in the amount of \$2,550.00 per month was due on or before the first calendar day of each month. The Tenant paid a security deposit of \$1,275.00, which the Landlords hold.

The Landlords' monetary claims were set out on a Monetary Order Worksheet, dated March 16, 2017. First, the Landlords claimed \$3,825.00 in rent for the period from November 1, 2016 to and including December 14, 2016. This claim arose because the Tenant vacated the rental unit on or about October 31, 2016, contrary to the fixed term tenancy agreement. The Landlords submitted a copy of a new tenancy agreement into evidence, which confirmed the Landlords were able to secure a new fixed-term tenancy agreement for the period from December 15, 2016 to June 30, 2018 (the "New Agreement").

Second, the Landlords claimed \$1,575.00 for lost rent to the end of the fixed-term. According to M.B., and as confirmed in the New Agreement, the Landlords were able to re-rent the unit for only \$2,200.00 per month, \$350.00 less per month. Accordingly, the Landlords claimed the difference in rent for the remainder of the fixed term agreement; that is, \$350.00 per month for 4-1/2 months, or \$1,575.00.

M.B. was specifically asked why the unit was rented for less rent per month under the New Agreement than under the agreement with the Tenant. On behalf of the Landlords, M.B. testified that the unit was advertised on craigslist and his company's website, but that the Landlords had to reduce the advertised rent on two occasions before a suitable tenant could be found. The unit was re-rented effective December 15, 2016.

Third, the Landlords claimed \$847.88 for liquidated damages. The tenancy agreement, submitted with the Landlords' documentary evidence, provided for liquidated damages. It states:

LIQUIDATED DAMAGES. *If the tenant breaches a material term of this Agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written, oral, or by conduct, of a intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay to the landlord the sum of \$850.00 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the landlord from claiming further rental revenue losses that will remain unliquidated.*

[Reproduced as written.]

In support, the Landlords submitted an invoice from the property management company in the amount of \$847.88.

Fourth, the Landlords claimed \$262.50 to repair damage to walls from hanging pictures in the rental unit. On behalf of the Landlords, M.B. testified that the rental unit was new when the Tenant moved in. He stated that although the Tenant attempted to fill holes in walls caused by hanging pictures, he painted the wrong colour. In an email from the Tenant to M.B., dated October 27, 2016, a copy of which was submitted with the Landlords' documentary evidence, the Tenant stated:

I touched up and filled the holes in the walls where I had hung pictures, the thing is I used the paint coded for the walls. The paint was not matching the paint on the walls, so I checked the paint code provided with the information in the Strata book, it matched. So I went to Cloverdale paint and checked the code and paint colour that was noted to use on the walls and all matched. It is clear that the paint provided and paint code information does not match the colour that was used to paint the walls in that suite.

It's close but it's far enough off to really show.

[Reproduced as written.]

Further, M.B. testified the Tenant was given opportunities to participate in move-out condition inspection but declined to do so. In an email dated November 1, 2016, a copy of which was submitted with the Landlords' documentary evidence, the Tenant wrote:

I will not be returning to Lower Mainland nor will I be appointing a representative for the sake of any inspections.

Inspect accordingly I am well aware of how the suite was left upon my vacating.

[Reproduced as written.]

Finally, the Landlords sought to recover the \$100.00 filing fee to make the Application, and requested that they be permitted to apply the security deposit in partial satisfaction of the claim.

Analysis

Based on the unchallenged and affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlords to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlords did what was reasonable to minimize the damage or losses that were incurred.

The Landlords claimed \$3,825.00 in unpaid rent as a result of the Tenant's breach of the fixed-term tenancy agreement. Policy Guideline 30 describes fixed-term tenancy agreements. It confirms that a fixed-term tenancy exists when "the landlord and tenant have agreed that the tenancy agreement will begin on a specified date and continue until a predetermined expiry date." Policy Guideline 30 goes on to state: "neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties." Based on the Landlords' evidence, I find the Landlords and Tenant were parties to a fixed-term tenancy agreement for the period from May 1, 2016 to April 30, 2017, and that the Tenant breached the fixed-term tenancy agreement by vacating the rental unit on or about October 31, 2016.

In addition, I find the Landlords took reasonable steps to re-rent the property and were only able to do so on December 15, 2016, six weeks after the Tenant vacated the rental unit. Accordingly, I find the Landlords are entitled to recover unpaid rent under the terms of the tenancy agreement and grant the Landlords a monetary award in the amount of **\$3,825.00**.

The Landlords also claimed \$1,575.00 for lost rent. Although the Landlords were able to re-rent the unit, effective December 15, 2016, the rate was \$350.00 less per month than under the agreement with the Tenant. The Landlords submitted with their documentary evidence a copy of the New Agreement. I grant the Landlords a monetary award in the amount of \$1,575.00 for lost rent. I note the New Agreement was effective December 15, 2016, and that this does not reflect precisely half of the month. However, the Landlords were entitled to receive rent in the amount of \$2,550.00 for December 2016, which the above awards accomplish.

Further, the Landlords claimed \$847.88 for liquidated damages. Policy Guideline 4 states:

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in an advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.

...

If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally, clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum.

[Reproduced as written.]

The liquidated damages clause provides for the payment of \$850.00 to the Landlords in the event of a breach of the fixed-term tenancy agreement. I find the amount of liquidated damages is reasonable when compared to the amount of rent paid by the Tenant (\$2,550.00), and is not oppressive. An invoice for property management services in the amount of \$847.88 was submitted by the Landlords in support. I grant the Landlords a monetary award in the amount of \$847.88, which is the actual amount paid by the Landlords.

Finally, the Landlords claimed \$262.50 to paint a portion of the rental unit. Although the Tenant attempted to repair holes and paint the walls, the email from the Tenant, dated October 27, 2016, confirmed the Tenant attempted to repair holes and paint walls, but that the colour used did not match. I grant the Landlords a monetary award of \$262.50.

Having been at least partially successful, I find the Landlords are entitled to recover the \$100.00 filing fee paid to make the Application. In addition, I order that the Landlords may retain the security deposit in partial satisfaction of the claim. Accordingly, pursuant to section 67 of the *Act*, I grant the Landlords a monetary order in the amount of \$5,335.38, which has been calculated as follows:

Claim	Allowed
Unpaid rent (November 1 to December 14, 2016):	\$3,825.00
Lost rent (December 15, 2016 to April 30, 2017):	\$1,575.00
Liquidated damages:	\$847.88
Painting costs:	\$262.50
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$1,275.00)
TOTAL:	\$5,335.38

Conclusion

The Landlords are granted a monetary order in the amount of \$5,335.38. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 8, 2017

Residential Tenancy Branch