



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding D-CON EQUITIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, MNSD, MNDC, FF

Introduction

The landlord and the tenants convened this hearing in response to applications.

The landlord's application is seeking orders as follows:

1. For a monetary order for money owed;
2. For a monetary order for damages to the unit
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To recover the cost of an emergency repair;
2. Return all or part of the security deposit; and
3. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for money owed?
Is the landlord entitled to monetary compensation for damages?
Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?
Are the tenants entitled to recover the cost of emergency repairs?
Are the tenants entitled to the return of their security deposit?

Background and Evidence

The parties entered into a fixed term tenancy that began on July 1, 2014, and was to expire on June 30, 2015. The parties renewed the fixed term and the most recent fixed term was to expire on June 30, 2017. Current rent in the amount of \$1,625.00 was payable on the first of each month. The tenants paid a security deposit of \$775.00. The tenancy ended on May 31, 2017.

Landlord's application

The landlord claims as follows:

a.	To recover liquidated damages	\$ 770.00
b.	Carpet cleaning	\$ 117.86
c.	Filing fee	\$ 100.00
	Total claimed	\$ 987.86

The landlord's agent testified that the tenants breached the fixed term tenancy agreement by ending the tenancy on May 31, 2017, which earlier than the fixed term agreement allowed. The landlord seeks to recover liquidated damages in the amount of \$770.00. Filed in evidence is a copy of the tenancy agreement, which has a liquidated damages clause.

The tenant testified that the landlord did not mitigate the loss of June rent.

Carpet cleaning

The tenant does not deny that they did not clean all the carpets at the end of the tenancy and does not dispute the amount claimed.

Tenants' application

The tenants claim as follows:

a.	Recover the cost for emergency repairs	\$ 400.00
b.	Return of security deposit	\$ 775.00
c.	Filing fee	\$ 100.00
	Total claimed	\$1,275.00

The tenant testified that on September 6, 2016 at 9:00 pm, the tenants from the lower unit came to them indicating that water was leaking in their rental unit. The tenant stated that they attempted to contact the landlord by telephone; however, they were unable to reach them.

The tenant testified that they investigated the leak and determined it was a leak on the hot water pipe and they turned the water off and informed the other tenants in the building that there would be no hot water until the leak was repaired.

The tenant testified that landlord attended a couple of days later to make the repair; however, when they were told it was fixed they went to have a shower there was no hot water. The tenant stated that the landlord did not turn the water back on or open the valves that were shut off earlier. The tenant stated they turn the water on and opened the valves and the water was still leaking.

The tenant testified that they are a red seal plumber and they should be compensated for five hours of their time at the rate of \$80.00 per hour for a total of \$400.00.

The landlord argued the tenant did not attempt to contact them. The landlord stated the tenant only turned the water off and did not make the repair.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, both parties have the burden of proof to prove their respective claims.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Landlord's application

Liquidated damages

Section 45 of the Residential Tenancy Act states: fixed term

45 (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,

In this case, the parties agreed that the tenants ended the tenancy effective on May 31, 2017, I find the tenants breached the Act as the earliest date the tenants could have ended the tenancy was June 30, 2017.

In this case, the landlord is not seeking loss of rent for June 2017, therefore the tenants argument for mitigation does not apply in this circumstances, as the liquidated damages is the cost the parties agreed to pay should the fixed term agreement be breached.

This is the cost of the landlord having to re-rent the unit, not for the loss of rent. As I have found the tenants' breached the Act, I find the landlord is entitled to recover liquidated damages as specified in the tenancy agreement in the amount of **\$770.00**.

Carpet cleaning

The tenant did not dispute the amount claimed. Therefore, I find the landlord is entitled to recover the cost of carpet cleaning in the amount of **\$117.86**

I find that the landlord has established a total monetary claim of **\$987.86** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$775.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$212.86**.

Tenants' application

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

...

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;

(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c) **the amounts represent more than a reasonable cost for the repairs;**

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

The tenant seeks to recover the cost of an emergency repair for a leaking pipe. I am not satisfied that the tenant made two attempts to contact the landlord. No phone records were provided and the landlord denied this.

Further, the tenant did not make the repair to the leaking pipe. The tenant turned the water off to the building, which was reasonable under the circumstance. The tenant is also claiming for trouble shooting the problem; however, I find that was the tenants' personal choice to investigate the leak. The tenants did not make the actual repair. Therefore, I dismiss this portion of the tenants' application.

As I have found in the landlord's application that they are entitled to retain the tenants security deposit in partial satisfaction of their claim. I dismiss the tenants' request for the return of their security deposit.

Since the tenants were not successful with any portion of their claim they are not entitled to recover the filing fee from the landlord.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

The tenants' application is dismissed.

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: December 05, 2017

Residential Tenancy Branch