



# Dispute Resolution Services

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## Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding 338249 B.C. DOING BUSINESS AS HOMELIFE PENINSULA PROPERTY MANAGEMENT and [tenant name suppressed to protect privacy]

### **DECISION**

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

#### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent and utilities, for damage to the rental unit and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits (collectively "deposits"), pursuant to section 38;
- other unspecified remedies; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The three tenants did not attend this hearing, which lasted approximately 48 minutes. The landlord's agent, CLR ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the maintenance manager and the operations assistant for the landlord company named in this application that is the property manager for the landlord owner. She stated that she had authority to speak on behalf of the landlord company and the owner at this hearing.

The landlord confirmed that the three tenants were each served separately with a copy of the landlord's application for dispute resolution hearing package by way of registered mail on June 22, 2017 to a forwarding address provided by the tenants on the move-out condition inspection report. The landlord provided three Canada Post receipts and tracking numbers with this application. In accordance with sections 89 and 90 of the *Act*, I find that all three tenants were deemed served with the landlord's application on June 27, 2017, five days after their registered mailings.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to correct the legal name of the landlord company, as it was initially stated as an acronym. I find that there is no prejudice to the tenants in amending the application, as it makes this decision and the resulting monetary order enforceable.

At the outset of the hearing, the landlord confirmed that she did not require "other unspecified remedies." Accordingly, this portion of the landlord's application is dismissed without leave to reapply.

#### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and utilities, for damage to the rental unit and for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' deposits?

Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on July 1, 2016 for a fixed term of one year ending on June 30, 2017, after which the tenants were required to vacate the rental unit. The tenants vacated on May 31, 2017. Monthly rent of \$1,695.00 was payable on the first day of each month. A security deposit of \$847.50 and a pet damage deposit of \$847.50 were paid by the tenants and the landlord continues to retain both deposits in full. Both parties signed a written tenancy agreement and a copy was provided for this hearing. Move-in and move-out condition inspection reports were completed for this tenancy and copies were provided for this hearing. The landlord did not have written permission to keep any amount from the tenants' security deposit. The tenants provided a written forwarding address to the landlord on the move-out condition inspection report on May 31, 2017. The landlord's application to keep the deposits was filed on June 15, 2017.

The landlord seeks a monetary order for \$5,605.17 plus the \$100.00 application filing fee. The landlord seeks \$330.00 for general cleaning, \$100.00 for yard maintenance, \$105.00 for carpet cleaning, \$161.07 for rubbish/light bulbs/repairs, \$1,507.40 for unpaid water and sewer utilities, \$1,695.00 for May 2017 rent, \$1,286.70 for a loss of June 2017 rent, \$25.00 each month for late fees and \$25.00 each month for NSF fees from November 2016 to June 2017 and \$20.00 in NSF fees for October 2016.

### Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the tenants did not agree to any deductions from their deposits because the landlord did not fill out the amounts being claimed in the move-out condition inspection report. I also find that the landlord failed to supply photographs of the condition of the rental unit before the tenants moved in and after the tenants moved out.

I award the landlord \$1,695.00 for unpaid rent for May 2017 because the tenants lived in the rental unit from May 1 to 31, 2017, they did not pay this amount to the landlord, and their tenancy agreement and

section 26 of the *Act* require them to pay rent of \$1,695.00 per month, which is due on the first day of each month.

I dismiss the landlord's claim for a pro-rated loss of rent from June 1 to 23, 2017 in the amount of \$1,286.70, without leave to reapply. The landlord stated that the tenants breached their fixed term tenancy agreement and moved out one month early on May 31, 2017, and the landlord were unable to re-rent the unit until June 23, 2017. The landlord only provided a copy of one rental advertisement on the property management website created on April 11, 2017, prior to the landlord issuing a notice to end tenancy to the tenants on May 16, 2017, and prior to them moving out on May 31, 2017. The advertisement includes a higher monthly rent of \$1,750.00 compared to the tenants' lower monthly rent of \$1,695.00, which may have detracted potential tenants. I find that the landlord did not know when or how often the advertisement was posted or refreshed, how many inquiries were made of the unit and how many showings were done, thereby failing to prove mitigation of its losses.

I award the landlord \$692.60 of the \$1,507.40 claimed for water and sewer costs. The remaining \$814.80 claimed is dismissed without leave to reapply. The landlord only provided one metered residential water and sewer bill in the amount of \$692.60 for February 28, 2017 and due on April 3, 2017, along with two letters to the tenants in March 2017, to pay this amount. Water and sewer costs are not included in the rent, as per page 3 of the parties' written tenancy agreement and the tenants were residing in the rental unit during this time and did not pay the above amount to the landlord. Although the landlord estimated an additional amount of \$814.80 for water/sewer costs from February 4, 2017 to June 23, 2017, the landlord did not provide the bills for this amount, only its own calculated estimate based on the above bill for \$692.60, nor did it provide proof that it was paid by the owner. The landlord had almost six months to submit evidence and prepare for this hearing, from when they filed their application on June 15, 2017 to the hearing date on December 4, 2017.

I dismiss the landlord's claim for \$330.00 for general cleaning of the rental unit, without leave to reapply. I find that the landlord failed part 3 of the above test by not providing a breakdown of the tasks done, the number of workers employed and the rate per hour for each worker on the cleaning invoice supplied by the landlord.

I dismiss the landlord's claims without leave to reapply for \$100.00 for the yard maintenance and \$105.00 for carpet cleaning. I find that the landlord failed part 3 of the above test by not providing the breakdown of the number of workers employed and the rate per hour for each worker on the carpet cleaning and the yard invoices.

I dismiss the landlord's claim without leave to reapply for \$161.07 for the rubbish/light bulbs/repairs. I find that the landlord failed to show why a contractor was used for these minor tasks, which are described on the invoice: "Replaced 4 light bulbs. Reattached vent grill on wall. Filled and painted 2 gouges on stairwell wall. Emptied garbage bins." The contractor indicated that the charge was \$50.00 per hour for 2.5 hours but did not indicate how long each separate task took. The "materials" were charged on this invoice at \$28.40, yet no receipts were provided to justify what materials were purchased and how much each item cost.

I dismiss the landlord's claims without leave to reapply for NSF fees of \$20.00 for October 2016 and \$25.00 for each month from November 2016 to June 2017. Despite the \$25.00 NSF fee being enumerated in the parties' written tenancy agreement, I find that the landlord failed part 3 of the above

test by not providing bank statements indicating what was charged for NSF fees each month. The landlord claimed that the bank charged the landlord for these fees but failed to provide proof of same.

I award the landlord \$25.00 in late fees for each month from November 2016 to May 2017, a period of seven months, totalling \$175.00. I find that the tenants were late paying rent during the above months according to the tenant ledger supplied by the landlord. The landlord provided for this \$25.00 monthly fee in clause 2.1 of the parties' written tenancy agreement, as required by sections 7(1)(d) and (2) of the *Regulation*. I dismiss the landlord's claim for late fees of \$25.00 for June 2017 because the tenants were not residing in the rental unit during this time and as noted above, I found that the landlord was not entitled to a loss of June 2017 rent because it failed to mitigate its losses.

As the landlord was mainly unsuccessful in this application, I find that it is not entitled to recover the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenants' security and pet damage deposits, totalling \$1,695.00. No interest is payable on the deposits during the period of this tenancy. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' entire security and pet damage deposits totalling \$1,695.00, in partial satisfaction of the monetary award.

#### Conclusion

I order the landlord to retain the tenants' entire security and pet damage deposits totalling \$1,695.00, in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$867.60 against the tenants. The tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the landlord's application is dismissed without leave to reapply.

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

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Residential Tenancy Branch