



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PW COMOX DEVELOPMENT LP AND PW COMOX HOLDINGS
LTD
and [tenant name suppressed to protect privacy]

DECISION

Code MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

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.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

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 unpaid rent?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties entered into a fixed term tenancy, which began on October 1, 2016, and was to expire on September 30, 2017. Rent in the amount of \$2,500.00 was payable on the first of each month. The tenants paid a security deposit of \$1,250.00 and a pet

damage deposit of \$1,250.00. The tenants vacated the rental unit on or about July 8, 2017.

The landlord claims as follows:

a.	Unpaid rent for July 2017	\$2,500.00
b.	Liquidated damages	\$2,500.00
c.	Filing fee	\$ 100.00
	Total claimed	\$5,100.00

At the outset of the hearing the landlord's agent stated that they are not seeking to recover liquidated damages. The landlord withdraws this portion of the claim.

The landlord's agent testified that the tenants were not happy and they determined that the best solution for the tenants was that they move-out of the premises. The agent stated that they agreed to mutually end the tenancy on July 31, 2017, as long a rent for July 2017, was paid. They also agreed they would not seek liquidated damages.

The tenant testified that they verbally agreed to vacate the premises on July 8th, 2017. The tenant stated they were only required to pay prorated rent.

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, the landlord has the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

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.

Section 26 of the Residential Tenancy Act states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In this case, I prefer the evidence of the landlord's agent over the tenants that the agreement was that the landlord's would release the tenants from their fixed term agreement as long a rent for July 2017, was paid as this has the "ring of truth" and is supported by email documents submitted by the tenants.

The email date June 29, 2017, the landlord agreed to mutual end the tenancy on July 31, 2017. The email of July 10, 2017, the landlord is looking for the balance of unpaid rent. This supports the landlords version of events that the agreed to end the tenancy on July 31, 2017.

The email dated July 13, 2017, reads in part,

"you, C-R, clearly listed the end of tenancy date as July 8th on the move out inspection. As this is a signed by both parties, I believe it is a binding agreement.

....

As you specified the move out date in the inspection report as July 8th, **I will consider** my tenancy ended on that date and arrange payment for that portion of the month".

[Reproduced as written.]

[My Emphasis Added.]

I find the testimony of the tenants to be untruthful, as the landlord did not agree to the end the tenancy on July 8th. The evidence supports it was the tenant that considered it ended simply because they vacated earlier and the move-out inspection was completed. Moving out early does not release the tenants' from their obligations under the Act to pay rent. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$2,500.00**.

I find that the landlord has established a total monetary claim of **\$2,600.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit and interest of **2,500.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$100.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

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

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: January 18, 2018

Residential Tenancy Branch