



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNDC MNSD SS FF

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, dated July 18, 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;
- a monetary order for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss;
- an order allowing the Landlords to retain all or part of the security deposit or pet damage deposit;
- an order for substituted service of the Application on the Tenants; and
- an order granting recovery of the filing fee.

The Landlords were represented at the hearing by N.N.G. The Tenant S.B. attended the hearing on his own behalf but advised he was not authorized to speak on behalf of B.M. and N.M., the other tenants, who did not attend the hearing. Both N.N.G. and S.B. provided a solemn affirmation at the beginning of the hearing.

On behalf of the Landlords, N.N.G. testified the Application package was served on S.B. by registered mail. S.B. acknowledged receipt. Accordingly, pursuant to section 71 of the *Act*, I find that S.B. was sufficiently served with the Application package for the purposes of the *Act*. However, N.N.G. confirmed he was unable to serve B.M. and N.M. as he did not know their whereabouts. I find that B.M. and N.M. were not served with the Application package. S.B. did not submit documentary evidence in response to the Application.

Both N.N.G. and S.B. were 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 rental unit?
2. Are the Landlords entitled to a monetary order for unpaid rent or utilities?
3. Are the Landlords entitled to a monetary order for money owed or compensation for damage or loss?
4. Are the Landlords entitled to retain all or part of the security deposit or pet damage deposit?
5. Are the Landlords entitled to recovery the filing fee?

Background and Evidence

The Landlords submitted a copy of the tenancy agreement between the parties into evidence. It confirmed the fixed-term tenancy began on October 1, 2016, and was expected to continue until September 30, 2017. However, S.B. testified the Tenants gave notice of their intention to vacate the rental unit on June 15, 2017, and did so by June 30, 2017. In any event, rent in the amount of \$1,900.00 per month was due on the first day of each month. The Tenants paid a security deposit in the amount of \$950.00, which the Landlords hold.

The Landlords' claim was summarized on the Application form. First, the Landlords claimed \$5,700.00 for unpaid rent for July, August, and September 2017 (\$1,900.00 x 3). He advised that, despite his efforts, he was unable to re-rent the property until the end of August 2017.

In reply, S.B. testified that he was aware of at least one prospective tenant who was prepared to move in earlier, but that the Landlords did not accept this tenancy.

Second, the Landlords claimed \$950.00 as liquidated damages. N.N.G. referred to paragraph 51 of the tenancy agreement, which states:

If the Tenant moves out before the natural expiration of this Lease, a re-rent levy of \$950.00 will be charged to the Tenant.

[Reproduced as written.]

N.N.G. stated that the “re-rent levy” was owed to the Landlords because of the time it took to re-rent the unit.

In reply, S.B. testified that he did his best to show the property to prospective tenants.

Third, the Landlords claimed \$2,000.00 for wall damage repair. N.N.G. testified there was damage in the rental unit, and that he has receipts and pictures available. However, no receipts or pictures were submitted.

Fourth, the Landlords claimed \$120.00 to clean hair and dust on the floors, and the kitchen stove and cabinets.

Fifth, the Landlords claimed \$230.00 for “expected damage repair costs”. During the hearing, N.N.G. testified that he received a quote for \$100.00 to repair or replace blinds, but that they have not yet been repaired or replaced.

In reply to the Landlords’ claims for wall damage repairs, cleaning costs, and other repair costs, S.B. submitted there was insufficient evidence to support the Landlords’ claim. Specifically, S.B. indicated the Landlords did not provide a condition inspection report (because the Landlords did not require a condition inspection at the beginning or end of the tenancy), photographic images, or receipts.

The Landlords also sought to recover the filing fee paid to make the Application, and to apply the security deposit held 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 Tenants. 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.

With respect to the Landlords' claim for \$5,700.00 for unpaid rent to the end of the fixed term, I find it is more likely than not that the rental unit could have been re-rented by August 1, 2017, six weeks after the Tenants' notice to vacate the rental unit was provided to the Landlords. Accordingly, I find the Landlords have demonstrated an entitlement to recover rent for the month of July 2017, or \$1,900.00.

With respect to the Landlords' claim for \$950.00 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.]

In this case, N.N.G. advised the levy was for the time the Landlords spent to re-rent the unit after the Tenants' breach of the tenancy agreement. I find there is sufficient evidence before me to conclude the levy was a genuine pre-estimate of the Landlords' loss and was not oppressive to the Tenants as it reflected only one half of one month's rent. Accordingly, I find the Landlords have demonstrated an entitlement to recover \$950.00 as liquidated damages.

With respect to the Landlords' claims for wall damage repairs (\$2,000.00), cleaning costs (\$120.00), and other repair costs (\$230.00), I find there is insufficient evidence before me to conclude the Landlords are entitled to recover these amounts. As noted by S.B., the Landlords did not provide sufficient evidence such as a condition inspection report, photographs of the rental unit at the end of the tenancy, and receipts in support of the alleged losses. These aspects of the Application are dismissed.

As the Landlords have been partially successful, I grant them recovery of the \$100.00 filing fee paid to make the Application, and order that the deposit held be applied to the amount owed to the Landlord. Pursuant to section 67 of the *Act*, I find the Landlords are entitled to a monetary order in the amount of \$2,000.00, which has been calculated as follows:

Item	Amount
Unpaid rent:	\$1,900.00
Liquidated damages:	\$950.00
Filing fee:	\$100.00
LESS security deposit:	(\$950.00)
TOTAL:	\$2,000.00

The Landlords did not serve the Tenants B.M. and N.M. with the Application package. As a result, although the Tenants are jointly and severally liable, the monetary order will be against the Tenant S.B. only, who acknowledged receipt of the Application package.

Conclusion

The Landlords are entitled to a monetary order in the amount of \$2,000.00. The monetary 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: January 18, 2018

Residential Tenancy Branch