



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38.

This matter was set for a conference call hearing at 1:00 p.m. on this date. The tenant did not attend. The landlord's agent (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The landlord confirmed that the landlord was served with the tenant's application for dispute and that they were aware of the listed issue(s).

I waited until 28 minutes past the start of the scheduled hearing time in order to enable both parties to connect with this teleconference hearing.

Rule 7 of the Rules of Procedure provides that:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.2 Delay in the start of a hearing

In the event of a delay of a start of a conference call hearing, each party must stay available on the line to commence the hearing for 30 minutes after the time scheduled for the start of the hearing.

In the event of a delay of a face-to-face hearing, unless otherwise advised, the parties must remain available to commence the hearing at the hearing location for 30 minutes after the time scheduled for the start of the hearing.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the tenant and in the absence of the tenant's participation in this hearing, I order the application dismissed without leave to reapply. I make no findings on the merits of the matter.

The landlord provided undisputed affirmed testimony that the tenants were both served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on September 29, 2017. The landlord has provided copies of the Canada Post Customer Receipt Tracking labels as confirmation of service. I accept the undisputed affirmed evidence of the landlord and find that the tenants were both properly served as per sections 88 and 89 of the Act.

The hearing proceeded in the absence of the tenant with the landlord's application for dispute.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on August 1, 2016 for a fixed term ending on July 31, 2017 as shown by the submitted copy of the signed tenancy agreement dated July 14, 2016. The monthly rent \$1,300.00 payable on the 1st day of each month. A security deposit of \$650.00 was paid.

The landlord seeks a revised monetary claim of \$806.62 which consists of:

\$184.12	Loss of Rental Income (Pro-Rated @46.03/Day for 5 days)
\$262.50	Carpet Cleaning
\$360.00	Cleaning

I note that although the monetary claim filed by the landlord was \$792.46, the revised amount is for the same items, but with a calculation for the loss of rental income of \$184.12 as opposed to the \$170.96. I allow the revision based upon the landlord's clarification that the calculations were incorrectly made based upon the tenants' monthly rent of \$1,300.00 instead of the new tenant's monthly rent of \$1,400.00 where they were compensated for the pro-rated amount for the loss of 4 days.

The landlord claims that the tenants failed to move out until August 5, 2017 and as such, the new tenants whose tenancy which was to begin on August 1, 2017 were reimbursed \$184.13 for the 5 days at \$46.03/Day as they were unable to take possession of the rental property. The landlord clarified that the new tenant's rent is based upon a \$1,400.00/month as opposed to the tenant's original \$1,300.00/month.

The landlord also claims that the tenants vacated the rental unit leaving it dirty requiring cleaning and with dirty carpets requiring carpet cleaning. The landlord has submitted in support of these claims copies of:

Condition Inspection Report, Move-in dated July 30, 2016
Condition Inspection Report, Move-out dated August 4, 2017
Invoice for Cleaning, dated August 7, 2017 for \$360.00
Invoice for Carpet Cleaning, dated August 8, 2017 for \$262.50.
Copy of Handwritten memo, re: Pro-Rated Loss of Rent for 4 days.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the landlord's undisputed affirmed evidence that the tenant failed to vacate the premises until August 4, 2017 when the condition inspection report for the move-out was completed by both parties.

I also find on a balance of probabilities that the landlord has provided sufficient evidence that the tenant vacated the rental premises leaving it dirty requiring cleaning and the carpet dirty requiring carpet cleaning as claimed based upon the submitted invoices noted above.

As such, I find that the landlord has established a monetary claim of \$806.62.

I also find that the landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

I authorize the landlord to retain the \$650.00 security deposit in partial satisfaction of the claim and award the landlord a monetary order the balance due of \$256.62.

Conclusion

The tenants' application was dismissed without leave to reapply.
The landlord is granted a monetary order for \$256.62.

The tenants must be served with this order. If the tenants fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court of British Columbia and enforced as an order of that Court.

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: February 14, 2018

Residential Tenancy Branch