



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMH POOL XLV LP and METCAP LIVING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This decision pertains to the Landlords' application for dispute resolution made on October 2, 2017, under the *Residential Tenancy Act* (the "Act"). The Landlords seek the following relief:

1. a monetary order for money owed or compensation for damage or loss; and,
2. a monetary order granting recovery of the filing fee.

Both the Landlords' agent and the Tenant attended the hearing before me, and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application will be considered in my decision.

Issues to be Decided

1. Are the Landlords entitled to a monetary order for money owed or compensation for damage or loss?
2. Are the Landlords entitled to a monetary order granting recovery of the filing fee?

Background and Evidence

The Landlords testified that a tenancy agreement was signed by both parties for a tenancy commencing December 1, 2013, and for a fixed term ending on May 31, 2014. The tenancy then continued month to month until the Tenant vacated the rental unit in early September 2017. Rent was \$1,400.46, due at the beginning of the month. The Tenant paid a security deposit of \$650.00.

The Landlords testified that there was a monthly indoor parking fee and a storage locker fee of \$40.00 and \$20.00, respectively. In addition, the Tenant paid a \$225.00 deposit for three indoor parking garage door remotes (\$75.00 per remote).

The Landlords testified that on September 2, 2017, they served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") by leaving a copy on the Tenant's door or in the mail box, with an effective date of September 15, 2017.

The Landlords testified that the Tenant did not pay rent for September 2017, and are claiming compensation for unpaid rent, indoor parking and storage locker fees, NSF charges, late rent fees, and a deposit for one of three garage remotes that the Tenant failed to return (in the amount of \$75.00).

The Tenant testified, and stated that they "agree with pretty much everything [the Landlords] just said." However, the Tenant disagreed with the Landlords' assertion that there was one garage remote not returned. The Tenant testified that they were issued three remotes at the beginning of the tenancy, but then returned all three sometime later. Two new remotes were then issued to the Tenant, of which both remotes were eventually returned to the Landlords.

The Tenant testified that the failure to pay rent for September 2017 and the resulting NSF was as a result of changing banks. Arriving home late on a Friday night (September 1, 2017), they were at that point unaware of the cheque clearing issue, only to discover the Notice attached to their door the next morning.

The Tenant testified that they had been planning on moving anyway, given a rather frustrating relationship with the Landlords. From the Tenant's perspective, because the Landlords now wanted the Tenant evicted, there was no reason to pay the rent.

The Landlords testified that they received no notice of the Tenant's intent to vacate, only discovering it when the building manager observed the Tenant moving out "sometime at the beginning" of September 2017. The rental unit was vacant within the week.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires that a tenant must pay rent when it is due under the

tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. Pursuant to section 46 of the Act, the Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service. The Notice also explains that the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Landlords testified, and provided documentary evidence to support their submission, that the Tenant did not pay rent when it was due, and has not paid rent for September 2017. The Tenant acknowledged that they did not pay rent for September 2017, and did not provide any evidence that they applied to cancel the notice. Taking into consideration all of the evidence and unchallenged testimony presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlords have met the onus of proving their claim for unpaid rent.

The Landlords testified, and provided documentary evidence to support their submission, that the Tenant did not pay a parking fee of \$40.00, a storage locker fee of \$20.00, and owes \$25.00 in NSF charges, and \$25.00 in late rent fees. The Tenant acknowledged that they did not pay the parking or storage locker fees, and did not dispute the NSF and late rent amounts claimed for September 2017. Taking into consideration all of the evidence and unchallenged testimony presented before me, and applying the law to the facts, I further find on a balance of probabilities that the Landlords have met the onus of proving their claim for fees related to the indoor parking, a storage locker, an NSF, and late rent.

Regarding the remote control, the Landlords testified that they gave the Tenant three (3) garage remotes, and that only two (2) were returned. The Tenant disputed this assertion, testifying that they had returned all three of the original remotes, and had returned the two remotes that were later issued by the Landlords. The Tenant submitted that there was no paperwork regarding the remotes. The Landlords submitted into evidence a copy of an inspection condition report which indicates that "2 REMOTES" were given to the Tenant at the move-in, and the "SECURITY DEPOSIT STATEMENT" at the bottom of the report reflects a deposit of \$150.00 for the remotes. Given the opposing testimony of the parties and insufficient documentary evidence regarding the garage remotes, I am not satisfied that the Landlords have met the onus of proving their claim for damages in relation to a lost garage remote, and accordingly dismiss that aspect of their claim.

Pursuant to section 67 of the Act, I find that the Landlords are entitled to a monetary award for unpaid rent (\$1,400.46), an unpaid parking fee (\$40.00), an unpaid storage

locker fee (\$20.00), an NSF charge (\$25.00), and a late rent fee (\$25.00). I order that the entire amount of the security deposit held (\$650.00) be applied to the award granted to the Landlords, and will grant an order for the balance, as explained below.

I also find that the Landlords are entitled to recover the \$100.00 filing fee.

A total monetary award of \$960.46 is calculated as follows:

Claim	Amount
Unpaid rent	\$1,400.46
Unpaid indoor parking fee	40.00
Unpaid storage locker fee	20.00
NSF charge	25.00
Late rent fee	25.00
Filing fee	100.00
LESS security deposit	(\$650.00)
Total:	\$960.46

Conclusion

The Landlords are granted a monetary order in the amount of \$960.46. This 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: May 3, 2018

Residential Tenancy Branch