



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1077441 B.C. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlord to obtain a monetary order for payment of rent arrears of \$3,350.00 for November, 2017 and for a further \$2,516.08 for unpaid utilities and other damages and losses. The Landlord also requests an order for payment of the filing fee.

An agent for the Landlord (hereinafter referred to as “Landlord”) appeared for the scheduled hearing, along with DW, who represented both Tenants. I find that the notice of hearing was properly served and that evidence was properly submitted. Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

Issues to be Decided

Is the Landlord entitled to a monetary order for rent arrears, damages and compensation, pursuant to section 67 of the Residential Tenancy Act (“Act”)?

Is the Landlord entitled to retain the security deposit in partial satisfaction of any monetary award, pursuant to section 38 of the Act?

Is the Landlord entitled to payment of the filing fee of \$100.00, pursuant to section 72 of the Act?

Background and Evidence

The tenancy began September 1, 2017 and ended November 30, 2017. The rent was \$3,350.00 per month, plus 60% of the utilities. A security deposit of \$1,675.00 and a pet deposit of \$1,675.00 was paid by the Tenants. A copy of the signed tenancy agreement was submitted into evidence; it included a signed addendum which stated that if the Tenant breaches a term of the agreement, he will be liable to pay the Landlord ½ months' penalty and rent until the unit is re-rented. The Condition Inspection Report was not submitted and the Landlord states that he did not have a copy of any report. The Tenant stated that there was a move-in inspection report and that items were listed on the report that required attention. He stated that the garburator needed fixing and that the rental unit needed the shower stall, stove, and cupboards cleaned.

The Tenant stated that it was a verbal agreement between the parties that the unit was to be taken off the market for sale if the Tenants agreed to a one-year fixed term to August 31, 2018; the Tenants signed the tenancy agreement with that understanding, but report that the rental unit continued to be listed on MLS and that this was a material breach of their agreement which justified ending the tenancy early.

The Landlord responded that he had no knowledge of the parties having made the agreement to de-list the property and that the short notice resulted in the owner having to hire a professional cleaner and a professional property management company to advertise and re-lease the unit. The Tenant states that he tried to pay for the November rent after his cheque had bounced, but that the Landlord evicted them with a 10-Day Notice to End Tenancy and they moved out November 15, 2017. He states that they cleaned the unit and left it in "better condition than when it was rented" to them. He testified that they washed and vacuumed floors, cleaned and washed all cupboards, cleaned the stove and bathrooms, but that some pine needles may have still been in the front foyer. There was no move-out inspection report completed at the end of the tenancy, the Landlord claiming a breakdown in communication.

The Landlord received the Tenants' forwarding address on November 28, 2017 and applied 15 days later on December 12, 2017 for the security deposit and other damages. The Landlord's claims are for the following:

1. Rent \$3,350.00 for the month of November, 2017; the cheque was returned "NSF" and the Landlord is claiming another \$45.00 bank fee as per the tenancy

agreement. The Tenant argues that the tenancy agreement was nullified due to the fact that the property remained on the market and for sale, contrary to their verbal agreement.

2. Professional cleaning charge of \$175.00; a receipt was provided and the Landlord argues that professional cleaning upon move-out was a condition of the additional terms to the tenancy agreement. There was no report or photographs to show the condition of the unit at the end of the tenancy, and the Landlord argues it was simply a term of the tenancy agreement which the Tenants had agreed to. The Tenant argues that it was left clean.
3. Fortis Natural Gas bills for September, October and November were submitted, 60% being calculated at \$170.58 and attributable to the Tenants.
4. BC Hydro bills for September, October and November were submitted, 60% being calculated at \$357.75 and being attributed to the Tenants; upon reconsidering the invoices submitted, the Landlord agreed to amend this claim to \$271.58 as one of the documents was for the overdue amount already accounted for. The Tenant states that he did agree to pay 60% of the utility charges, but that he was unable to obtain copies of the invoices until they were served as part of this Application.
5. Leasing Fee – the Landlord submitted a “Listing Agreement” and invoice from Luxury Living for \$1,758.75, which he claims was a one-time fee charged by the property manager to the owner. The owner felt it necessary to hire a professional to list and re-lease the unit, arguing that it was due to the short notice from the Tenants who vacated mid-November. The Tenant suggested that it was already re-rented within days of his vacating.

Analysis

Under section 67 of the Act, a party can be ordered to pay or compensate another party to a tenancy. To be successful in a claim for compensation for damage or loss the Applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the Act, regulation or tenancy agreement;
3. The value of the damage or loss; **and**

4. Steps taken, if any, to mitigate the damage or loss.

I find that the Landlord has proven its claim of **\$3,350.00** for the November rent which was due and owing on November 1, 2017 under the terms of the tenancy. The Tenants had the option of disputing the 10-Day Notice to End Tenancy however, they chose to move out instead as they considered the tenancy to be voided. Accordingly, I find that they are liable for the rent for the month of November. The Landlord claims the sum of **\$45.00** for the NSF cheque as per the tenancy agreement; however, section 7 of the Regulations to the Act limits this fee to **\$25.00**, which I am awarding to the Landlord.

The Landlord is also claiming another \$1,758.75 for professional property management fees to re-rent the premises. The Landlord has a duty to mitigate its losses; there is no evidence to show that this was a necessary step or that the unit was unable to be rented with regular advertising and showing on the part of the owner. This is a cost of business which the owner incurred at his own discretion, and the contract between him and the property management company is not binding on the Tenants. I find that the Landlord has failed to mitigate his losses by hiring the company to re-rent the premises and I am not allowing that part of the claim.

The Tenant admits that they are liable for 60% of the utilities and does not dispute the amounts that were submitted into evidence, therefore, I accept the claim that the Tenants owe the total sum of **\$442.16**. As there appeared to be no direction as to whether the Tenants were to pay the Landlord or pay the utilities directly, I am awarding the sum to the Landlord.

Under section 37 of the Act, it states:

37 (1) *Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.*

(2) *When a tenant vacates a rental unit, the tenant must*

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

The Landlord argues that the parties agreed to professional cleaning. However, the standard required under the legislation is reasonable cleanliness. The Landlord has the

burden of proving that the Tenants failed to meet this standard. There was no Condition Inspection Report, no photographs and no witness to testify as to the state of the premises upon move-out presented by the Landlord to substantiate its claim of \$184.00 for cleaning. The Tenant disputed this claim by testifying as to the cleaning that was completed upon moving out. I find that the Landlord has failed to provide sufficient evidence to satisfy me that the Tenants left the premises in a state that is not "reasonably clean". Accordingly, I am not allowing this part of the claim.

The Landlord requests payment of the filing fee of \$100.00. However, had the Landlord accepted the Tenants' later attempts to pay the November rent or had provided the utility bills in a timely manner, this Application would not have been necessary. As the outcome of the Landlord's Application is mixed, I am not inclined to award the filing fee.

Finally, the Landlord requests the right to retain the security deposit and pet damage deposit in partial satisfaction of the monetary award. Under section 36(2), the right of a landlord to claim against these deposits for damage is extinguished if the landlord has not complied with section 35, which requires the completion of move-in and move-out inspection reports. There is no evidence to suggest that the Landlord made any attempt to do a move-out inspection with the Tenants at the end of the tenancy, which extinguishes his right to the deposits.

Although the Tenants are entitled to repayment of their deposits, which total \$3,350.00, I am authorized to deduct the amount of the deposits in the case where a tenant is owing rent payments or other compensation to a landlord. Section 72(2) allows the amount of the monetary award to be set-off by the amount of the security deposit and pet damage deposit due to the Tenants. Accordingly, I am prepared to apply a set-off for the monetary award granted to the Landlord in this Application. The Landlord holds \$3,350.00 in deposits and has been awarded \$3,837.16 in rent arrears, unpaid utilities and bank fees. The deposits shall be applied to set off the monetary award, leaving a balance owing by the Tenants calculated as follows:

Item	Amount
Unpaid Rent - November	\$3,350.00
Unpaid Utilities	442.16
NSF/Bank Fee	25.00
TOTAL	3,817.16
<i>Less Security and Pet Deposit</i>	<i>-3,350.00</i>
Total Monetary Order	\$467.16

This order must be served on the Tenants and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenants fail to make payment. Copies of this order are attached to the Landlord's copy of this Decision.

Conclusion

The Tenants are jointly and severally liable to pay the Landlord the sum of \$467.16 forthwith.

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: June 20, 2018

Residential Tenancy Branch