



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remaanagement Solutions
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

Although the landlord in this application is stated as “REMAX MANAGEMENT SOLUTIONS” this company is in fact the property management company for an individual landlord CK. For ease of reference the property management company will be referred to in this Decision and the Order as “landlord”.

Pursuant to section 9.1 (1) of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt with the landlord's application for:

- a Monetary Order for unpaid rent and utilities pursuant to section 67 of the *Act*;
- a Monetary Order for damages or compensation pursuant to section 67 of the *Act*;
- an Order allowing the landlord to retain the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

The landlord's agents (KC1 and KC2) and the tenants (CLD and AT) appeared for the scheduled hearing. I find that the notice of hearing was properly served and that evidence was properly served and submitted by all parties.

There was an Amendment to the Application made by the landlord on June 15, 2018, to reduce the amount of the total monetary claim to \$16,001.51. The tenants said that they had received notice of the Amendment but they were not sure of the date. As the proposed amendment was simple they were prepared to proceed today. I granted the amendment and the hearing proceeded.

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.

Issue(s) to be Decided

Is the landlord entitled to:

- a Monetary Order for unpaid rent and utilities pursuant to section 67 of the *Act*;
- a Monetary Order for damages or compensation pursuant to section 67 of the *Act*;
- an Order allowing the landlord to retain the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*?

Background and Evidence

This tenancy began when the tenants took occupation of the premises on April 1, 2017 and concluded when the tenants vacated the premises on December 1, 2017.

There was a written tenancy agreement filed that stated that the tenancy was to run from April 1, 2017 to June 30, 2018. Rent was payable at the rate of \$3,200.00 per month on the first day of each month. The tenants agreed to pay a security deposit of \$1,600.00 and this was received by the landlord on February 15, 2017.

A move in inspection was done on March 31, 2017 with a written report prepared. A move out inspection was done on December 5th, 2017 and, the tenants' forwarding address was provided to the landlord that day. This application was filed by the landlord on December 19, 2017.

On November 1, 2017, the tenants sent the former property manager an email to say that they were buying a house so they were "...going to have to break our lease." As the former property manager had retired this email was forwarded to and received by the landlord's agent KC1. The parties agree that from that point forward it was understood that the tenants would be leaving. The landlord began to show the premises to prospective new tenants shortly thereafter and the tenants fully cooperated with this process. The parties agree that the tenants vacated the premises on December 1, 2017, and that there was a move-out inspection done on December 5, 2017.

The evidence of the tenants is that they originally thought that their liability to pay damages for breaking their lease was limited to the sum of \$1680.00 as liquidated damages in accordance with paragraph 5 of the written tenancy agreement. Both tenants gave evidence that the former property manager had told them this before they signed the tenancy agreement and had specifically drawn their attention to paragraph 5.

Both tenants gave evidence that they had read paragraph 5 before they signed the tenancy agreement. This states as follows:

“LIQUIDATED DAMAGES. If the tenant ends the fixed term tenancy, or is in breach of the Residential Tenancy Act or a material term of this Agreement that causes the landlord to end the tenancy before the end of the fixed term as set out in (B) above, or any subsequent fixed term, the tenant will pay to the landlord the sum of \$1,680.00 as liquidated damages and not as a penalty. Liquidated damages are an agreed pre-estimate of the landlord's costs of re-renting the rental unit and **must be paid in addition to any other amounts owed by the tenant, such as unpaid rent** or for damages to the rental unit or residential property”. *Emphasis added*

The landlord had new tenants move in on April 1, 2018. There was evidence given that the landlord made extensive efforts to find new tenants as soon as it became aware that the property would be vacant. I have no doubt that this happened as the landlord was trying to mitigate the loss to their client who owns the property. There was also evidence that the tenants were very proactive in their efforts to try to refer potential new tenants to the landlord. I have no doubt that this happened as they were trying to reduce their own exposure for having broken the terms of their lease.

The landlord's claim is broken down on a Monetary Order Worksheet that was served and filed.

The first claim is the sum of \$12,800.00 for lost rent for the months of December 2017, January, February, and March of 2018, at the rate of \$3,200.00 per month as is provided for in the tenancy agreement.

The second claim is the sum of \$1,680.00 as liquidated damages in accordance with paragraph 5 of the tenancy agreement.

The third claim is the sum of \$1,272.14. This sum represents the total cost of electric, natural gas and water bills for the home between December 1, 2017 and April 1, 2018. The figures that make up this total were supported by a series of bills from Fortis Electric, Fortis Gas and the City of Kelowna submitted into evidence by the landlord. Evidence was given by the landlord's agent KC1 that he needed to keep heat on to prevent pipes from freezing; that the heat was kept low and only turned up before showings; that lights were off except for during showings. This evidence was not challenged by the tenants.

The fourth claim is sum of \$173.25 for snow removal. This is supported by an invoice dated 19-01-2018 from a local landscaping company for 3 hours of shoveling on February 7, 2018. Evidence was given by the landlord's agent KC1 that he needed to hire this company one time after a heavy snowfall as he had received a call from the City By-Law department stating that the sidewalk had to be cleared or a fine would be levied. He also stated that no claim was being made for the snow shoveling he had done on a number of occasions of the driveway and walkway to permit showings of the home.

The fifth claim is the sum of \$67.12 for ice melter. This is supported by an invoice from Rona dated 19-01-2018. Evidence was given by the landlord's agent KC1 that he needed to purchase snow melter for use after snowfalls in conjunction with the snow shoveling he had done on a number of occasions of the driveway and walkway to permit showings of the house. He also stated that the charge is for only for 3 of 4 containers actually purchased for use.

The landlord also seeks the filing fee from the tenants.

Analysis

The tenants breached the terms of the fixed term tenancy agreement by vacating the premises seven months before the end of the term. Although they may have not have fully appreciated the consequences of their actions they had a written contract which they both read before they signed. If they were not able to understand what they were asked to sign they could have refused or sought some professional assistance.

Either party to a tenancy may bring an application for damages under section 67 of the *Act* which states:

Without limiting the general authority in section 62 (3), if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

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.

With respect to the claim by the landlord for the sum of \$12,800.00 for lost rent, I find that the landlord has provided evidence sufficient to establish all four points set out above. There was a loss of rent for 4 months; the loss resulted from a violation of the tenancy agreement by the tenants; the value of the lost rent is clear; the landlord had new tenants move as soon as they could be found. Accordingly, there will be an order for damages for lost rent of \$12,800.00 pursuant to section 67 of the *Act*.

With respect to the claim by the landlord for the sum of \$1,680.00 for liquidated damages, I find that the landlord has provided evidence sufficient to establish all four points set out above. There was an actual loss based on the evidence led by the landlord; the loss resulted from a

violation of the tenancy agreement by the tenants; the value of the loss is clear, reasonable and, was agreed to in advance by the tenants; the landlord acted reasonably and to the benefit of the tenants by being proactive in efforts to re-rent the premises. Accordingly, there will be an order for liquidated damages of \$1,680.00 pursuant to section 67 of the *Act*.

With respect to the claim by the landlord for the sum of \$1,272.14 as the total cost of electric, natural gas and water bills for the home as between December 1, 2017 and April 1, 2018, this total is supported by a series of bills submitted into evidence by the landlord. Evidence was given by the landlord's agent KC1 and why these costs were incurred and why they are reasonable and, this evidence was not challenged by the tenants. There was an actual loss based on the evidence led by the landlord; the loss resulted from a violation of the tenancy agreement by the tenants; the value of the loss is clear and reasonable. I find that the landlord has provided evidence sufficient to establish all four points set out above. Accordingly, there will be an order for damages of \$1,272.14, pursuant to section 67 of the *Act*.

With respect to the claim by the landlord for the sum of \$173.25 for snow removal, this amount was supported by a bill submitted into evidence by the landlord. Evidence was given by the landlord's agent KC1 and why the cost was incurred and why it was reasonable. There was an actual loss based on the evidence led by the landlord; the loss resulted from a violation of the tenancy agreement by the tenants; the value of the loss is clear and reasonable. I find that the landlord has provided evidence sufficient to establish all four points set out above. Accordingly, there will be an order for damages of \$173.25, pursuant to section 67 of the *Act*.

With respect to the claim by the landlord for the sum of \$76.12 for ice melter, this amount was supported by a bill submitted into evidence by the landlord. Evidence was given by the landlord's agent KC1 and why the cost was incurred and why it is reasonable. There was an actual loss based on the evidence led by the landlord; the loss resulted from a violation of the tenancy agreement by the tenants; the value of the loss is clear and reasonable. I find that the landlord has provided evidence sufficient to establish all four points set out above. Accordingly, there will be an order for damages of \$76.12, pursuant to section 67 of the *Act*.

As the landlord was successful on this application it is entitled to recover the filing fee of \$100.00 from the tenants.

The situation with payment of the security deposit is the final issue to resolve. I have found that the landlord received the sum of \$1,600.00 as the security deposit.

Section 38 of the *Act* establishes the provisions regarding the return of the tenant's security deposit and/or pet damage deposit. Subsection 38(1) of the *Act* reads as follows:

38 (1) *Except as provided in subsection (3) or (4) (a), within 15 days after the later of*
(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit

RTB Policy Guideline 17, paragraph 10 states:

The landlord has fifteen days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit plus interest to the tenant.

Here the landlord has met the requirements of section 38 (1) as the application was filed within the 15-day time period after the landlord received the forwarding address of the tenants.

There was no suggestion that the landlord failed to perform incoming or outgoing condition inspection reports in accordance with the *Act*, rather the evidence was that these had in fact occurred. Therefore, the landlord has not extinguished the right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the *Act*.

As a result, the landlord is entitled to retain the security deposit of \$1,600.00 and to apply this as against the monies owing by the tenants.

Conclusion

The amount payable by the tenants to the landlord is calculated as follows:

Item	Amount
4 months rent @ 3200.00	\$12,800.00
Liquidated damages	1,680.00
Gas/electric/City waters bills	1,272.14
Snow removal charge	173.25
Ice Melter	76.12
Application filing fee	100.00
Deduct damage deposit retained	(1600.00)
Total Monetary Order	\$14,501.51

The landlord is given a formal Order in the above terms and the tenants must be served with a copy of this Order as soon as possible. Should the tenants fail to comply with this Order, the

Order may be filed in the Small Claims division of the Provincial Court 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: July 08, 2018

Residential Tenancy Branch