



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

On June 20, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for unpaid rent and compensation for damages, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlords and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before 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.

Preliminary Matters

The Landlords stated they were withdrawing their claim for compensation for losses regarding unpaid hydro bills. In accordance with Section 64(3) of the Act, I have amended the Landlords’ Application by only including a request for a Monetary Order for unpaid rent and to recover the cost of the filing fee.

Issues to be Decided

Should the Landlords receive a Monetary Order for unpaid rent, in accordance with Section 67 of the Act?

Should the Landlords recover the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

The Landlord and the Tenant agreed on the following terms of the Tenancy Agreement:

The Tenant viewed the rental unit on September 22, 2017 and signed a Tenancy Agreement on October 6, 2017 with the intention to move into the unit on November 1, 2017. The Tenant agreed to a one-year fixed term tenancy and to pay the monthly rent of \$3,900.00. The Tenant paid a \$3,900.00 security deposit on October 11, 2017. When the Tenant advised the Landlords that she wasn't going to move into the rental unit, the Landlords returned \$1,950.00 of the security deposit to the Tenant. The Landlords currently hold a balance of \$1,950.00.

Landlords' Evidence:

The Landlords testified that they attended the rental unit on October 31, 2018 to conduct a move-in inspection with the Tenant. Both parties signed the Condition Inspection Report and the Tenant was provided a set of keys and the Tenant provided the Landlords a cheque for the November 2018 rent and eleven post-dated cheques. The Landlords stated that the Tenant had some concerns with the condition of the house and that they were in the process of arranging some cleaning and fixing some issues. The Landlords said that the November 1, 2018 cheque bounced and that they did not collect rent from the Tenant.

On November 6, 2017, the Tenant provided her written notice that she was not going to move into the rental unit, wanted her security deposit returned and provided her forwarding address.

The Landlords testified that they had had several potential tenants interested in the rental unit prior to committing to the Tenant and when they attempted to contact them after the Tenant ended the tenancy, they were unsuccessful in renting the unit. The Landlords stated that they posted an ad for the rental unit on Craigslist on November 7, 2017 and then again on January 16, 2018. They stated that they lowered the rent to \$3850.00 and signed new tenants for March 1, 2018. The Landlords did not provide any evidence of their attempts to re-rent the rental unit.

When asked, the Landlords did acknowledge that, while the rental was empty, they had completed some repairs to the house, finished a basement bathroom and tried to fix it up to make it attractive to potential renters.

The Landlords are claiming lost rent for November 2017 to February 2018 and a loss of \$50.00 per month from March 2018 to October 2018 for a total of \$16,000.00.

Tenant's Evidence:

The Tenant testified that the rental was advertised as a five-bedroom house and when she toured through it, there were only three bedrooms with a playroom and a den. When she attended the rental property on October 31, 2017, she noted that there were 26 things that were problematic with the house and the yard. Although she received a key to the home, she learned that the previous tenant still had the remote for the garage. She provided the Landlords a

cheque for November 2017 rent and also 11 other post-dated cheques. The Tenant advised the Landlords that she would move in on November 6, 2017 and hoped that the Landlords would be able to complete the work that needed to be done during that time. The Tenant stated she was worried about the Landlords not following through and canceled her rent cheque for November 1, 2017.

The Tenant testified that she went by the rental unit on November 5, 2018 and none of the repairs had been completed; therefore, she provided her notice that she did not want to move into the rental unit and wanted to end the tenancy. The Tenant stated that the Landlords have not returned the balance of her security deposit of \$1,950.00.

The Tenant testified that she believed that the Landlords did not rent out the rental property for the reasons that it was not in a rentable condition and secondly, that they were completing renovations throughout November 2017 to February 2018. The Tenant submitted pictures of the rental that showed the garage full of building supplies that included drywall, tiles, flooring, cupboards and a new vanity. The Tenant stated she lived close by to the rental and was able to observe, take pictures and also note that the same tradesperson's vehicle was at the rental unit throughout November, December and January.

Analysis

Residential Tenancy Policy Guideline – 17. Security Deposit and Set off guides an Arbitrator to consider the return of a security deposit whether or not the Tenant applied for Dispute Resolution for its return.

Section 38 of the Act states that the Landlord has fifteen days, from the later of the day the tenancy ends or the date the Landlord received the Tenant's forwarding address in writing to return the security deposit to the Tenant, reach written agreement with the Tenant to keep some or all of the security deposit, or make an Application for Dispute Resolution claiming against the deposit. If the Landlord does not return or file for Dispute Resolution to retain the deposit within fifteen days and does not have the Tenant's agreement to keep the deposit, or other authority under the Act, the Landlord must pay the Tenant double the amount of the deposit.

I accept the Tenant's undisputed testimony and evidence that she provided her forwarding address to the Landlords and requested her \$3,900.00 security deposit and subsequently, only received \$1,950.00 from the Landlords.

I have no evidence before me that the Landlords returned the balance of the security deposit, reached written agreement with the Tenant to keep some of the security deposit or made an Application for Dispute Resolution claiming against the deposit within fifteen days of receiving the Tenant's forwarding address. For these reasons, I find the Landlord must reimburse the

Tenant double the amount of the outstanding security deposit for a total of \$3,900.00, pursuant to Section 38 of the Act.

Section 7(1) of the Act establishes that a Tenant who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the Landlord for damage or loss that results from that failure to comply. 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 the responsible 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 Applicant, in this case, the Landlord, must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 16 of the Act states that the rights and obligations of a Landlord and Tenant under a Tenancy Agreement take effect from the date the Tenancy Agreement is entered into, whether or not the Tenant ever occupies the rental unit. I find that the Tenant entered into a Tenancy Agreement with the Landlords when she signed the Tenancy Agreement and paid a security deposit by October 11, 2017.

Section 26 of the Act explains that the Tenant must pay rent when it is due under the Tenancy Agreement, whether or not the Landlord complies with this Act, the Regulations or the Tenancy Agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent. As I do not have any evidence before me that the Tenant had a right under this Act to deduct any of their rent, I find that the Tenant is in breach of Section 26 of the Act by not paying her rent for November 2017.

Section 45(2) of the Act states that a Tenant may end a fixed term tenancy by giving the Landlord a notice to end tenancy effective on a date that; is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the Tenancy Agreement as the end of the tenancy; and, is the day before the day in the month that rent is payable under the Tenancy Agreement. I find that the Tenant has breached Section 45(2) of the Act by giving the Landlords notice to end her tenancy earlier than the date specified in the Tenancy Agreement. As a result of the Tenant failing to pay rent, failing to give proper notice and essentially, abandoning the tenancy, I find that the Landlord has established a monetary claim for lost rent.

Before awarding a monetary claim to the Landlord, I have to consider Section 7(2) of the Act that states a Landlord or Tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their Tenancy Agreement, must do whatever is reasonable to minimize the damage or loss. The Landlords testified that they attempted to rent out their rental unit by posting an ad at two different times during the four

months the rental unit was empty. The Landlords did not provide any evidence to demonstrate that their unit was advertised. The Landlords admitted that they were conducting some renovations while the rental unit was vacant; however, did not provide any evidence to support their claim that it was minimal and limited to minor repairs and the finishing of a basement bathroom.

Based on the testimony and evidence presented, I find that the Landlords failed to provide sufficient evidence that they attempted to fully mitigate their losses, in accordance with Section 7(2) of the Act.

When I consider that the Tenant has breached the Act by failing to pay rent and give proper notice and that the Landlords have failed to fully mitigate their losses, I turn my mind to the Landlords ability to have rented out the rental unit for November of 2017. I recognize, as a result of the Tenant's notice on November 6, 2017, that the Landlords would not have been easily able to obtain a new tenant for November 2017. Furthermore, as mentioned by the Landlords during the hearing, I accept that it is difficult to find new tenants during the month of December. As a result, I find that they Landlords should be compensated for two months of unpaid rent, for a total of \$7,800.00.

The Landlords did attempt to mitigate their losses by renting out the rental unit for \$50.00 less per month. I find that the Landlords should be compensated for the loss of \$50.00 rent from March to October 2018, for a total of \$400.00.

I find that the Landlords have established a monetary claim for unpaid rent for a total amount of \$8,200.00.

I find that the Landlords have only been partially successful in their Application and should not be compensated for the cost of the filing fee.

I issue a Monetary Order in the Landlords' favour under the following terms, which allows the Landlords to recover unpaid rent; however, is offset by the return of double the Tenant's security deposit:

Item	Amount
Unpaid November 2017 Rent	\$3,900.00
Unpaid December 2017 Rent	3,900.00
8 months x \$50.00	400.00
Less double the security deposit	-3,900.00
Total Monetary Order	\$4,300.00

Conclusion

The Landlords have established a monetary claim, in the amount of \$8,200 in unpaid rent, from which \$3,900.00 for double the security deposit is deducted. Based on these determinations I grant the Landlords a Monetary Order for the balance of \$4,300.00 in accordance with Section 67 of the Act. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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: September 28, 2018

Residential Tenancy Branch