



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HomeLife Glenayre Realty Chilliwack Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDCK-S, FFL
 MNDCT, FFT

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenant for a monetary order in the amount of \$2,400.00 for the Landlord’s failure to provide a rental unit in proper condition and other damages. The Tenant also requests an order for payment of the filing fee.

The Landlord filed a cross-application requesting a monetary order for payment of the February 2018 rent and a late fee in the total sum of \$1,420.00. The Landlord also requests an order for payment of the filing fee and to retain the security deposit.

The Landlord and Tenant both appeared for the scheduled hearing. Neither party raised a concern about the service of the Notice of Hearing or evidence that was submitted by the parties.

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, call witnesses and to cross-examine the other party on the relevant evidence provided in this hearing.

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.

Issues to be Decided

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

Is the Landlord entitled to a monetary order for rent loss and other damages, pursuant to section 67 of the Act?

Is the Landlord entitled to retain the security deposit, pursuant to section 38 of the Act?

Is either party entitled to payment of the filing fee, pursuant to section 72 of the Act?

Background and Evidence

This tenancy began December 1, 2017 and ended January 31, 2018; the Tenant vacated prior to that date, but paid rent to the end of January. The tenancy agreement was for a fixed term of one year, to expire November 30, 2018. Rent was \$1,400.00 per month, payable on the 1st of each month, and a security deposit of \$700.00 was paid. The tenancy agreement was submitted into evidence.

The Tenant states that he noticed issues with a “noisy” hot water tank and reported this to the Landlord shortly after moving in. Messages between the parties were submitted into evidence indicating attempts to investigate and make any adjustments to stop the sound of the water running, which was eventually completed. There was no interruption of any services to the Tenant during his stay at the rental unit. The Tenant decided that the place was unsuitable to his needs.

The Tenant provided notice to end tenancy and his forwarding address to the Landlord in writing on December 12, 2017. In a text message submitted into evidence, the Tenant writes to the Landlord, *“Nothing has happened and I’ll pay the penalty. I think you can rent the place easily too if you help to do that. The building is a little old and I wasn’t familiar with the city that time I rented it and it was the only option I had. But I saw there are really nice apartments in Garrison and I want to move there whenever I could find a vacancy.”*

The Landlord accepted the notice and advised the Tenant that he was responsible for a charge for breaking the lease, along with rent until the rental unit could be re-rented. The Landlord relies on the written agreement and addendum which was submitted into evidence. Paragraph 24 of the signed Addendum to the tenancy agreement states, *“When the Tenant wants to move out, he/she MUST provide [landlord’s name redacted] with a written, signed notice (bearing the signatures of ALL parties named in the lease)....The notice must be a minimum of one clear month, cannot take effect before the end of a fixed term tenancy agreement, and must be given on or before the last day of a payment period, to be effective on the last day of a subsequent rental payment period.”*

Paragraph 32 of the Addendum states, *“If the Tenant wants to end the lease before the term of the lease is up, there will be a cancellation fee equal to 25% of the rent inclusive of all taxes. The minimum fee is \$225.00. This in no way releases the Tenant from his/her responsibility to pay rent until another suitable tenant, approved by [landlord’s name], is secured....The*

cancellation fee is to be paid at the time the Notice to Vacate is given, or the cancellation fee plus an additional \$25 will be taken from the Tenant's security deposit."

On December 13, 2017, the Tenant emailed the Landlord *"please take the penalty cost from the security deposit....Please take the penalty and start advertising the place as soon as possible today..."*

There were 76 pages of text messages submitted into evidence which document communications between the parties in December through January, as they both attempted to locate a new renter for the rental unit. The Tenant was advertising and passing along names of respondents to the Landlord, who was vetting them as potential tenants.

A move-out inspection report was signed off by the Tenant on January 9, 2018 and notes that the Tenant will still be liable for ongoing rent under the fixed term agreement. There is a notation in the section where the Tenant may agree to the Landlord retaining the security deposit which reads, *"Does not apply Jan 09, 2018. Penalty fee will come from security deposit upon being released from lease, full amt held."* The Tenant and Landlord signed below the notation. A copy was submitted into evidence.

Although the Tenant's dispute notice states he is claiming a monetary award of \$2,400.00, he testified that he is simply asking for an order that he not be required to pay the February rent of \$1,400.00 because in his view, the Landlord did not make sufficient effort to find a new renter quickly. He is also requesting that his security deposit balance be addressed in a decision of the Residential Tenancy Branch. Finally, he is continuing to pay \$100.00 a month to the Landlord to make up the difference in the current rent being paid and requests an order to determine whether this payment is to continue, be discontinued or returned to the Tenant.

The Landlord testified that they responded to the Tenant's complaint about the hot water tank and that it was repaired, as evidenced by a receipt submitted into evidence. A toilet flapper was replaced and the tub drain unclogged. There is also an invoice of a service call dated December 12, 2017, the same date as the Tenant gave notice to end the tenancy. The Landlord states it attended to all complaints of the Tenant in the month that he resided in the rental unit, in a timely manner. The Tenant was not without services or water during this time, the only issue being the sound of water running in the tank.

The Landlord is claiming for the February rent in the sum of \$1,400.00 and states that full effort was made to work with the Tenant to vet prospects and to locate a new renter as quickly as possible. She explained that many of the names the Tenant provided did not bother to complete a simple online application form to start the process; others were not qualified due to being pet owners and the strata does not permit pets. According to the Landlord, the Christmas season and winter conditions made the market slow as few people were wanting to relocate to a new rental unit. She states every effort was being made to advertise online and to work with the Tenant and his prospects to qualify a new renter.

The rental amount was lowered to \$1,300.00 on the advice of the Tenant and a new renter was finally secured for March 1, 2018 with the understanding that the Tenant would continue to pay \$100.00 a month towards the rent to make up the difference, which the owner agreed to. The Landlord states that the actual rent received from the new renter is \$1,200.00 a month; this Tenant has paid \$100.00 a month for the last 8 months. Although the original fixed term was to expire November 30, 2018, the Landlord submits that the Tenant agreed to continue paying \$100.00 a month until February 2019, one full year from when the lease was broken. The Landlord states that the new renter has no complaints about the water tank or noise in the building.

The Landlord applied part of the security deposit in the amount of \$375.00 to the penalty payment for breaking the lease, as agreed to by the Tenant; the balance of \$325.00 remains in trust pending the end of the term of the original lease agreement. The Landlord takes the position that the Tenant agreed to allow the Landlord to retain the deposit in the interim, as per his signature on the Condition Inspection Report.

The Landlord requests that it retain the balance of the security deposit in partial satisfaction of its monetary claim of \$1,400.00 for February rent and \$20.00 for a late fee. Both parties also claim the \$100.00 filing fee.

Analysis

Under section 7 of the Act, a party who fails to comply with the Act, regulation, or tenancy agreement must compensate the other party for damage or loss that results. 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

The Tenant and the Landlord each hold the burden of proof to prove damages for their respective claims, on a balance of probabilities.

A tenant is allowed to end a tenancy under the provisions of section 45 of the Act:

45. A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
(a) is not earlier than one month after the date the landlord receives the notice, and
(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

- (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that**
(a) is not earlier than one month after the date the landlord receives the notice,
(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
(3) *If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.*
(4) *A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy]. [bolding added]*

In this case, the Tenant provided notice on December 12, 2017 and paid rent until the end of January. The Landlord is correct in that the notice takes effect on the date of the end of the tenancy under the agreement, namely November 30, 2018, as per section 45(2)(b). However, the Landlord is required to make reasonable effort to rent out the rental unit as soon as possible to mitigate losses.

I find that the Landlord has demonstrated through evidence and testimony that a reasonable effort was made to re-rent the property as soon as the Tenant vacated. The time of year and weather conditions made this a challenge, and by February the rent requested was dropped to \$1,300.00 a month to attract more interest from qualified renters. The Landlord is reasonable in carefully qualifying prospects to ensure that they meet the basic requirements to rent the space. I find that it was rented as quickly as possible, and therefore the Tenant is liable for the February rent of \$1,400.00 while the rental unit remained vacant.

With respect to the monthly payment of \$100.00 that the Tenant is making, I find that the parties agreed to have the Tenant pay \$100.00 per month to make up for rent revenue losses and that this is evidenced by the fact that the Tenant has made these payments for the past 8 months and the Landlord has accepted these payments. Furthermore, the Landlord has not made any claim for rent revenue losses beyond February, 2018. However, I do not believe that the Tenant agreed to make these payments until February 2019. His fixed term contract was to end November 30, 2018 and the Landlord has failed to satisfy me that there was any agreement to extend his requirement to pay beyond the term of his lease agreement. As of November 30, 2018, the Tenant's notice would take effect and his obligations to pay rent will expire. Accordingly, I find that the Tenant's requirement to pay \$100.00 for rent revenue losses will terminate as of that date. The only remaining payment is for November 1, 2018 for \$100.00.

Accordingly, I find that the Landlord is entitled to total rent revenue losses of \$1,500.00 (\$1,400.00 for February rent and \$100.00 for November 1, 2018). I am not awarding the February late fee of \$20.00; a claim for rent revenue losses would not include late payment

charges. The Tenant asks that I consider the fact that the water tank was noisy and that the repair was slow to be completed, in his view. I find that the Landlord fulfilled its obligations to investigate and make a repair for this very minor issue and that any inconvenience to the Tenant would not warrant a rent rebate or monetary compensation to be applied against rent that is owing.

Both parties have asked that the balance of the security deposit be addressed. I find that the Tenant provided written consent for the Landlord to use the security deposit to cover the charge for breaking the lease. That amount of 25%, or \$375.00, was deducted in accordance with their agreement at the end of the tenancy. This leaves a balance of \$325.00 which the Landlord holds in trust as the security deposit. I find that the Tenant agreed in writing to the Landlord retaining the security deposit to the end of the term of the tenancy agreement as security, as indicated in the Condition Inspection Report. The Landlord has requested that this balance be applied to the amount owing by the Tenant at this time; the Tenant asks that the security deposit be addressed and refunded if warranted.

I find that the Landlord has complied with all requirements of section 35 the Act by conducting a move-out inspection and completing a report with the Tenant, who consented to the Landlord holding the security deposit until the end of the term of the original tenancy. I find that the Landlord was entitled to retain the security deposit in the interim, as the Tenant had given consent as per section 38(4) of the Act.

Section 72 of the Act allows a security deposit to be used as a deduction against an amount owing by a tenant to a landlord. Accordingly, I order that the \$325.00 balance of the security deposit be credited against the monetary award and I further order payment of the filing fee of \$100.00 as requested by the Landlord:

The final monetary order is calculated as follows:

Item	Amount
Rent revenue losses	\$1,500.00
Less: security deposit balance	(\$325.00)
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$1,275.00

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

Conclusion

The Tenant shall pay forthwith to the Landlord the sum of \$1,275.00.

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: October 10, 2018

Residential Tenancy Branch