



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Columbia Property Management Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL-S, MNDCL-S, FFL

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlord requesting a monetary order of \$1,924.50 for cleaning, repairs, rent loss and other damages. The Landlord also requests an order for payment of the filing fee and to retain the security deposit and pet damage deposit.

The Landlord’s Agent appeared for the scheduled hearing. The Tenant did not attend this hearing, although I left the teleconference hearing connection open for 10 minutes in order to enable the Tenant to call into this teleconference hearing scheduled for 1:30 p.m. The Landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

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 Landlord testified that the Notice of Hearing and evidence package was sent by registered mail to the Tenant and that the Tenant signed for the package on April 5, 2018. I am satisfied that the Tenant was served with the dispute notice in accordance with section 89 by registered mail and that she chose not to attend the hearing, which was held in her absence.

Issues to be Decided

Is the Landlord entitled to a monetary order for cleaning, repairs, rent loss and other damages, pursuant to section 67 of the Residential Tenancy Act ("Act")?

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

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

Background and Evidence

This tenancy began July 1, 2017. The original tenancy agreement was for a fixed term to end June 30, 2018 with rent of \$950.00 payable on the first of each month. A security deposit of \$475.00 and a pet damage deposit of \$475.00 is held in trust by the Landlord. Copy of the signed agreement was submitted into evidence.

The agreement included terms to comply with the strata bylaws; to pay any fines resulting from violations of the strata bylaws; NSF or late charges of \$25.00 per incident (addendum B) and a \$300.00 liquidated damage charge (addendum A) if the lease was broken prior to the end of a fixed term.

The Tenant gave email notice to the Landlord on February 13, 2018 that she intended to vacate on March 1, 2018; the rental unit still had the Tenant's items inside and the Tenant had said she would return. The Landlord made several attempts to do a final walk-through inspection, and two notices of inspection that were served were submitted into evidence.

By March 13, 2018, the Landlord was advised by the Tenant to "get rid of" anything she had left behind; an inspection was completed that day, a report prepared and submitted into evidence. The Tenant did not attend the move-out inspection. A forwarding address was provided via email on February 28, 2018 to the Landlord, as the Tenant left the city. The Landlord considers the tenancy to have ended on March 13, 2018.

The Landlord attempted to re-rent the rental unit as quickly as possible; a copy of a February 14 online advertisement for \$950.00 a month was submitted into evidence. Due to the Tenant's delay in clearing out the unit, it could not be re-rented until March 26, 2018. The Landlord is claiming rent revenue losses from March 1 to March 25, 2018 in the amount of \$770.00. The Landlord is also claiming the \$300.00 liquidated damages as the Tenant ended the tenancy prior to the end of the fixed term. The

Landlord is also claiming 2 X \$25.00 charges for NSF fees for December and January rent. These items are documented in a ledger submitted into evidence.

The Landlord provided a Condition Inspection Report and photographs to document the condition of the rental unit as of March 13, 2018. The Landlord also provided testimony in support of the following claims:

1. The rental unit had been cleaned by the Tenant near the end of the tenancy, but on March 13, 2018, the Landlord had to enter and remove food, personal effects, clothing and other items (including furniture) that were left behind. The cost to remove items was \$262.50 and an invoice was submitted into evidence.
2. The rental unit needed the cupboards and fridge cleaned after items were removed on March 13, 2018; the baseboards, blinds and floors also required cleaning, which took about four hours to complete. A cleaning invoice for \$96.60 was submitted into evidence.
3. There was wax along the window sill in the master bedroom and holes from a headboard in the wall; these required patching and painting, along with other minor wall damage. An invoice for painting in the sum of \$262.50 was submitted into evidence.
4. The keys were not returned; an invoice for \$133.02 to change the locks and mailbox lock was submitted into evidence.
5. The strata charged the owner a \$50.00 move out fee, which the Landlord is charging back to the Tenant for her move out.

The total claim the Landlord makes against the Tenant is \$1,924.62; the Landlord also requests payment of the \$100.00 filing fee and asks to retain the deposits in the amount of \$950.00 in partial satisfaction of the monetary award.

Analysis

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

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 Applicant bears the burden of proving their claim, on a balance of probabilities.

I will first address the claim for rent revenue losses. Under section 45, a tenant may give notice to end a tenancy:

45 ...

*(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. (bolding added)

I find that the Tenant is in breach of section 45 in providing notice on February 13th, 2018 to end the tenancy March 1, 2018, as the fixed term did not expire until June 30, 2018. The Tenant is required to pay for the monthly rent until the end of the fixed term, however, the Landlord is obligated to mitigate its losses by making reasonable attempts to re-rent the rental unit as soon as possible.

I have considered the evidence and find that the Landlord advertised for the same rental rate as soon as possible to avoid losses; I further find that the Tenant failed to return to retrieve her belongings and that the Landlord was delayed in being able to secure a new renter as a result. The Landlord is entitled to the rent revenue losses of **\$770.00** for the period from March 1 to March 25, 2018.

I have reviewed the agreed terms of the tenancy agreement and find that the Tenant is liable to pay **\$300.00** as liquidated damages for having ended the tenancy prior to the end of the fixed term; I find that this is a reasonable estimate of costs associated with having to advertise, show and re-rent the rental unit during the fixed term. The Landlord's Tenant ledger shows December and January NSF charges of \$25.00 each outstanding; I grant the Landlord **\$50.00** for these charges. Finally, I am granting the

\$50.00 move-out charge that was imposed on the owner when the Tenant vacated the rental unit.

I now turn my attention to the claims for cleaning and damages; section 37 of the Act stipulates how a tenant is expected to leave a rental unit at the end of a tenancy:

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. (bolding added)*

I have reviewed the undisputed evidence and find that the rental unit required additional cleaning to bring it to an acceptable standard to be rented out. I am awarding the sum of **\$96.60** for cleaning and **\$262.50** for debris removal. In addition, the keys were not returned and I award the Landlord **\$133.02** to change the locks at the end of the tenancy.

The Landlord asks to retain the security deposit and pet damage deposit in partial satisfaction of the claim. Section 38 states, in part:

Return of security deposit and pet damage deposit

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.

Based on the evidence provided, I find that although the Tenant gave notice to end the tenancy February 28, 2018 she in fact carried over until March 13, 2018 because she had indicated to the Landlord that she was returning to retrieve her belongings and to do a move-out inspection by March 13th. When she decided not to return and advised the Landlord to dispose of her remaining belongings, she was effectively handing over possession of the rental unit and the Landlord was required to take measures to prepare the rental unit for new renters. Section 44 of the Act states that a tenancy ends if a tenant vacates or abandons the rental unit, which I find that she did as of March 13th. Accordingly, I find that the tenancy ended on March 13, 2018. The Landlord had 15 days from that point to return the deposits or file a dispute application, which it did on March 22, 2018.

Although there was no damage from pets reported, section 72 of the Act permits me to credit the amount owing to the Tenant for the pet damage deposit against moneys owing by the Tenant to the Landlord, which is reflected in the calculation below. The Landlord shall retain both the security deposit and pet damage deposit in partial satisfaction of its monetary claim. As the Landlord was successful in its claim, I am also awarding the filing fee.

The final monetary order is calculated as follows:

Item	Amount
Rent Revenue Losses	\$770.00
Liquidated Damages	300.00
NSF Charges	50.00
Cleaning	96.60
Painting	262.50
Debris Removal	262.50
Lock Replacement/Keys	133.02
Strata Move-out Fee	50.00
Less: security deposit and pet damage deposit	(\$950.00)
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$1,074.62

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 is ordered to pay the sum of \$1,074.62 forthwith to the Landlord.

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 22, 2018

Residential Tenancy Branch