



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

This hearing was convened in response to an application by the landlord whom filed their application March 14, 2018 for Orders as follows;

1. A monetary Order for unpaid rent/loss of revenue - landlord holds security deposit in trust – Section 67
2. A monetary Order for loss (cleaning) – Section 67
3. An Order to recover the filing fee for their application - Section 72

I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution, notice of hearing, and evidence by *registered mail* in accordance with Section 89 of the Residential Tenancy Act (the Act), sent to the tenant's forwarding address provided by them, the tenant did not participate in the conference call hearing. The landlord was given full opportunity to be heard, to present evidence and to make submissions.

In accordance with the landlord's evidence the *Style of Cause* has been amended in respect to the spelling of the tenant's name.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed for loss (cleaning)?

Is the landlord entitled to a monetary order for unpaid rent/loss of revenue?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The undisputed *relevant* evidence in this matter is as follows. The tenancy began May

01, 2017 as a written fixed term tenancy agreement ending April 30, 2018. The hearing had benefit of the written Tenancy Agreement. At the outset of the tenancy the landlord collected a security deposit in the amount of \$650.00 which the landlord retains in trust. The payable monthly rent under the agreement was \$1350.00. The evidence of the landlord is that at the

end of the tenancy the tenant agreed in writing to solely compensate the landlord \$100.00 for carpet cleaning. The landlord testified that at the end of the tenancy they came upon the tenant's storage locker still containing the tenant's belongings and as a result they had to clean it out in the absence of the tenant.

The landlord submitted that the tenant was given a 2 Month Notice to End the Tenancy for Landlord's Use effective April 30, 2018 pursuant to a sale of the rental unit and the buyers written notice to the landlord they intended to occupy the rental unit.

The landlord also submitted a *Mutual Agreement to End a Tenancy* document, mutually entered and duly endorsed by both parties on January 23, 2018 stating the parties' agreement that the tenancy would legally terminate and come to an end February 28, 2018.

The landlord submitted another document titled *Agreement of Completion Day Change* also dated January 23, 2018 which they explained the parties endorsed by their signatures. The landlord explained the intent of the latter document was to provide for certain extra terms and conditions to the Mutual Agreement to End Tenancy and further defining the parties' reliance on their Mutual Agreement. The landlord testified they crafted the extra document in their quest to establish a relationship between the Mutual Agreement to End Tenancy and a pending real estate purchase transaction of the landlord's rental property. The landlord provided that, effectively, if the *buyer* of the rental unit did not agree to a change of the completion date for the rental unit purchase by January 25, 2018 the Mutual Agreement of the landlord and the tenant would become null and of no effect and the tenant would be required to remain in the tenancy and satisfy the rent until April 30, 2018. The landlord provided an email from a realtor stating that the buyer was not in agreement with the change, but regardless of which the tenant vacated February 28, 2018 in accordance with the Mutual Agreement to End the tenancy.

The landlord testified they provided the tenant their due compensation of one month's rent for receiving a 2 Month notice to end Tenancy for Landlord's Use. The landlord now seeks the payable rent for March and April 2018 in the sum of \$2700.00.

The landlord testified they also sought to recover an allowance that they gave the tenant for accommodating showings of the rental unit toward a sale; however the landlord acknowledged they had not submitted sufficient evidence to support this claim.

Analysis

A copy of the Residential Tenancy Act, Regulations and other publications are available at www.gov.bc.ca/landlordtenant.

I find that the landlord has provided evidence the parties agreed to the partial administration of the security deposit by the landlord withholding **\$100.00** for carpet cleaning and as a result I find the landlord is entitled to this amount.

I find the landlord has provided sufficient evidence in support they are owed a quantum for having to deal with the tenant's remnants in the storage locker of the tenancy. I find that the landlord's claim of **\$50.00** is not extravagant under the described circumstances therefore I grant the landlord this amount.

In respect to the landlord's claim for loss of revenue for March and April 2018, I find that the parties entered into a written Mutual Agreement to end the tenancy pursuant to the provisions prescribed in **Section 44(1)(c)** of the Act. I find the landlord's contemporaneous contract titled *Agreement of Completion Day Change* offends **Section 5** of the Act which states that any attempt to avoid or contract out of the Act or the regulation is of no effect. I find the Act does not operate to render a legal Mutual Agreement (an instrument provided within the Act) ineffective through the imposition of contemporaneous or extraneous conditions imposed by an overreaching contract designed to abridge rights afforded by the Act. In different words, I find that upon entering into a Mutual Agreement to End the tenancy as afforded and in accordance with the Act the landlord attempted to contract out of the Act by the addition of overriding conditions with the intent to claw back the legally binding Mutual Agreement.

In this matter, I find that the parties entered into a valid *bona fide* Mutual Agreement to End Tenancy as permitted and prescribed by **Section 44** of the Act, providing agreement by both parties for the tenancy to come to an end on February 28, 2018. The tenant vacated on that date and received their due compensation as prescribed by the Act for having received a 2 Month Notice to End Tenancy for Landlord's Use.

As a result of all the above I find that the landlord is not entitled to the purported loss of revenue for the months claimed and therefore this portion of the landlord's application is **dismissed**, without leave to reapply.

I have not been presented with sufficient evidence in respect to the balance of other monetary claims placed in the landlord's application; therefore the remaining claims of the landlord's application are **dismissed**, without leave to reapply.

As the landlord was in part successful in their application I find they are entitled to recover part of their filing fee, of which I grant the landlord half the amount paid.

Calculation for Monetary Order

The security deposit will be offset in the award made herein.

award for carpet cleaning and cleaning of locker (\$100 + \$50)	\$150.00
Recovery of half the filing fee (\$100 x .5 = \$50.00)	\$50.00
net to landlord	\$200.00
<i>Minus security deposit in trust</i>	<i>-\$650.00</i>
balance to tenant	(\$450.00)

Conclusion

The landlord's application as relevant has been granted.

I Order that the landlord may retain \$200.00 from the tenant's security deposit in full satisfaction of their award and return the balance of \$450.00 to the tenant, forthwith.

I grant the tenant a **Monetary Order** under Section 67 of the Act in the amount of **\$450.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding.

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