



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BOLLD REAL ESTATE MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

On November 8, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for the loss of rent, for damages to the rental unit, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord 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.

Issues to be Decided

Should the Landlord receive a Monetary Order for damages, in accordance with Section 67 of the Act?

Should the Landlord receive a Monetary Order for compensation for lost rent, in accordance with Section 67 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

The Landlord and Tenant agreed on the following terms of the tenancy:

The one-year, fixed term tenancy began on September 25, 2018. The rent was \$1,975.00 and the Landlord collected a \$987.50 security deposit. The Tenancy Agreement was electronically signed by both the Landlord and the Tenant on September 14, 2018.

The Landlord testified that the move-in inspection occurred on September 22, 2018. The Landlord stated that once the Tenant moved in to the rental unit, she communicated that she was unhappy with the unit and could not live there anymore.

The Landlord worked with the Tenant and began to show the rental unit to prospective renters. The Landlord said the Tenant moved out of the rental unit near the end of October 2018, however, did not provide formal notice that she was going to vacate the unit.

The Landlord was able to maintain communications with the Tenant and obtained the keys for the unit on November 11, 2018. The Landlord conducted a move-out inspection of the unit on November 14, 2018 without the Tenant present.

The Landlord testified that when they applied for Dispute Resolution, they were unsure of how many months there may be without tenants; however, the Landlord managed to find new tenants for the rental unit for November 16, 2018.

The Landlord is claiming a loss of rent from November 1-15, 2018, in the amount of \$987.50.

The Landlord is claiming compensation for liquidated damages, in accordance with the Tenancy Agreement, in the amount of \$592.50.

The Landlord is claiming a loss of \$25.00 for the November 2018 rent cheque that they attempted to cash and was returned as "non-sufficient funds".

The Landlord is claiming compensation for the \$269.00 professional cleaning that was completed on November 14, 2018. The Landlord stated that the Tenant failed to clean her rental unit upon abandoning it and agreed to the term of professional cleaning when she signed the Tenancy Agreement.

The Landlord is seeking a Monetary Order for compensation for a total loss of \$1,874.00.

The Tenant testified that once she learned that the rental unit was overlooking a cemetery, that she could not live in the rental unit. The Tenant stated that she communicated the issue with the building manager who stated that she would try her best to help the Tenant resolve the problem. The Tenant said that the manager attempted to find a new tenant for November 2018.

The Tenant stated that she provided consent to the manager to keep her security deposit as a means to clean up the property after she moved out and to cover any issues as a result of the Tenant no longer renting the unit. The Tenant felt as if she had made a verbal arrangement with the manager to end the tenancy as of the beginning of November 2018.

Analysis

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 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 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 accept the Landlord's undisputed evidence that the Tenant failed to provide proper notice to end her tenancy, contrary to Section 45(2) of the Act. Based on the Landlord's undisputed testimony, I find that the Tenant failed to pay her November 2018 rent, in accordance with Section 26 of the Act.

Based on the testimony and evidence provided, I find that the Landlord has established a monetary claim for the loss of rent, in accordance with Section 67 of the Act.

Before awarding a monetary claim to the Landlord, I have to consider Section 7(2) of the Act that states a Landlord who claims compensation for damage or loss that results from the Tenant's non-compliance with this Act, or their Tenancy Agreement must do whatever is reasonable to minimize the damage or loss.

Based on both parties' testimony, I find that the Landlord showed diligence in attempting to find a new tenant for the rental unit. As a result, I find that the Landlord has established a monetary claim for the loss of half of November 2018's rent, in the amount of \$987.50.

The Tenant acknowledged signing the Tenancy Agreement and entering into the terms and conditions within the Tenancy Agreement. As a result of this and the Tenant breaching her fixed term tenancy, I find that the Landlord has established a monetary claim for liquidated damages, in the amount of \$592.50.

The Tenant acknowledged signing the Tenancy Agreement and entering into the terms and conditions within the Tenancy Agreement. As a result of this and that the Tenant provided consent to the Landlord to keep her security deposit to clean up the rental unit after moving out, I find that the Landlord has established a monetary claim for compensation for the cost of the cleaning fee, in the amount of \$269.00.

I have established that the Tenant was responsible for paying the November 2018 rent, in accordance with Section 26 of the Act and the Tenancy Agreement. I accept the undisputed evidence from the Landlord that the Landlord was unable to cash the Tenant's rent cheque and incurred a loss. I find that the Landlord has established a monetary claim for the non-sufficient funds charge, in the amount of \$25.00.

I find that the Landlord was successful with their Application and therefore, should be compensated for the cost of the filing fee, in the amount of \$100.00, in accordance with Section 72 of the Act.

I issue a Monetary Order in the Landlord's favour under the following terms, which allows the Landlord to recover unpaid rent, liquidated damages, cleaning fees, bank fees and the filing fee for this Application, and to retain the Tenant's security deposit:

Item	Amount
Unpaid November 1-15, 2018 rent	\$987.50
Liquidated Damages	592.50
Cleaning fees	269.00

NSF cheque fees	25.00
Recovery of Filing Fee for this Application	100.00
Less security deposit	-987.50
Total Monetary Order	\$886.50

Conclusion

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$886.50. 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: December 19, 2018

Residential Tenancy Branch