



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes

Landlord MNDCL-S, FFL

Tenant MNRT, MNDCT, MNSD, FFT

Introduction

This is a Review Hearing of the proceeding convened in response to a successful application for Review consideration filled by the landlord. This matter was previously scheduled then adjourned by Interim Decision with respective Interim Orders, and ultimately rescheduled to this date.

The initial original Application for Dispute Resolution was brought by the landlord for a monetary order. In this Review Hearing the landlord expressly confirmed their claim for solely loss of revenue of \$1500.00 for December 2018, unpaid utilities of \$147.90 and for a new lock and keys in the amount of \$72.78. The tenants subsequently filed a cross-claim for a monetary order. In this Review Hearing the tenant expressly confirmed their claim for solely recovery of their original deposits of the tenancy and for the cost of emergency repairs of \$150.00. Both parties sought recovery of their filing fee. Both parties attended all hearing dates and were provided successive opportunity to mutually resolve their dispute to no avail.

Preliminary matters – service of documents – non-compliance with Interim Order(s)

In pursuit of this Review Hearing Decision the proceeding to date has been fraught with contrasting testimony and an absence of evidence respect service of documents. The parties have provided an abundance of disputatious testimony supporting the existence of a highly distrustful, ultimately ineffective relationship which can aptly be described as 'bad blood'. In addition both parties have repeatedly displayed disrespect for the solemn and legal nature of the dispute resolution proceeding by repeatedly maligning the other party and ignoring reminders of the Arbitrator. The landlord has repeatedly made claims they have never received an application or evidence from the tenant. The tenant has also failed to follow an Order in the course of the proceeding. On the other hand the tenant made claims they did not receive certain evidence from the landlord

and then disclosed they had again moved and did not provide their new address to the landlord. As a result the parties were provided an ultimate opportunity to quell the issues surrounding service. The tenant was distrustful to divulge their address to the landlord. Therefore the landlord was Ordered to provide specific evidence to the tenant by e-mail and provide proof of same. Additionally the tenant was Ordered to send the landlord their application and all their evidence by *registered mail* and provide proof of same.

At the time of this final hearing date the tenants confirmed to me they ultimately received evidence from the landlord as was Ordered by my Interim Decision dated October 29, 2018. I am therefore satisfied the landlord followed the respective Orders and the tenant received all of the landlord's evidence also before this proceeding.

The landlord claims they did not receive the tenant's application, evidence, or other hearing documentation by *registered mail* as was equally Ordered October 29, 2019. The tenant claims they sent all that was Ordered served by registered mail and that it was returned as undeliverable. However, the tenant did not and could not provide evidence of mail registration or information to enable tracking of the registered mail, as was Ordered, claiming they discarded it. As of the time of this hearing I have not been provided evidence to aptly satisfy me that the tenant has provided the landlord with their application and evidence as has been provided to this proceeding, despite granting the tenant an ultimate opportunity to do so, by express Orders.

As a result of all the above the tenant's application was preliminarily **dismissed** for lack of evidence that they provided the landlord with their application and any hearing documentation as they were Ordered in the course of this Review Hearing. The hearing proceeded solely on the merits of the landlord's application.

The parties were given opportunity to present testimony, make submissions, present witnesses, and cross-examine the other party on the *relevant evidence* provided to this hearing pursuant to the rules of procedure.

Although all admissible evidence was taken into consideration only that which is relevant and germane to the application has been considered and discussed in this Review Hearing Decision. It must be known that the burden of proving one's claims rests on the applicant.

Issues to be Decided

Is the Landlord entitled to compensation for loss of revenue for December 2017?
Is the Landlord entitled to compensation for loss in respect to unpaid utilities of the tenancy and compensation for locks and keys of the rental unit?

Is the landlord entitled to recover their filing fee?

Background and Evidence

The relevant evidence in this matter is as follows. The tenancy began in March, 2017. At the outset of the tenancy the landlord collected a security and pet damage deposit in the sum of \$1500.00 which they hold in trust. The tenancy ended November 30, 2017 when the tenant ultimately acted on the landlord's Order of Possession dated November 17, 2017 granted them for an undisputed Notice to End Tenancy for unpaid rent of \$150.00, via the Direct Request process. The tenants had failed to pay all rent when due for November 2017 claiming to have offset the rent for their payment of emergency repairs. Upon protest from the landlord in respect to the claimed emergency repair the tenants chose to reduce the payable rent by \$150.00 versus applying for dispute resolution to recover their claimed emergency cost.

It is undisputed by both parties that the required *move in* and *move out* inspections did not reveal indication of any deficiencies or damage during the tenancy period. Regardless, the landlord's submission of the Condition Inspection Report is incomplete and moreover void of any inclusions, or a signature by the tenant at page 3, despite the parties' agreement on the acceptable condition of the rental unit.

It is undisputed by the tenants that the landlord is owed \$147.90 for unpaid utilities of the tenancy.

The landlord is also claiming for the cost of replacing the tenancy lock and corresponding keys. It is undisputed by the parties that at the move out inspection the local Police intervened and during their attendance the landlord received a set of keys from the tenants via a Police officer in the presence of the tenant and their witness, I.V. The tenant testified the Police officer inserted the keys in the tenancy door to confirm they operated as intended then handed the keys to the landlord. The tenant provided the witness, I.V., whom testified they also observed the Police officer accepting the keys, inserting them into the tenancy door, "and they worked"; then went to hand the

keys to the landlord. The landlord testified that the Police had separated the parties and therefore they were not a witness to the Police actions. They claim they accepted the keys from the Police then left the residential property. They claim that later on they noted the keys they received from the Police officer “did not work out” on the rental unit door lock. Therefore the landlord is now claiming the cost of replacing the lock and keys in the amount of \$72.78 for which they provided an invoice. The tenant disputes the landlord’s claim for new locks and keys, surmising the landlord likely inadvertently exchanged the keys with a set of one of their other rental units. The landlord testified they have no verifiable evidence that the tenant’s entire version of events involving the Police is truthful.

The landlord is further claiming lost rent revenue of \$1500.00 for the month of December 2017 because the tenant vacated on the last day of November 2017 and they were unable to immediately re-rent the unit for December, 2017. The landlord provided a craigslist posting dated December 05, 2017 at 9:47 a.m. which indicates the advertisement was posted ‘*less than a minute ago*’. The landlord offered the single posting as a “sample of numerous advertisements” which they claim eventually resulted in a new tenancy agreement effective January 2018. The tenant disputes the landlord suffered any loss of revenue. They testified encountering an abundance of prospective tenants viewing the unit on December 01, 2017 and spoke to a family with children moving into the rental unit on December 06, 2017 with a moving truck. The landlord responded solely that it was not possible to secure a new tenancy so soon. The landlord did not provide into evidence proof of a new tenancy (agreement).

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

By agreement of the parties the landlord is granted **\$147.90** for unpaid utilities.

Section 7 of the Act provides as follows.

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

- 7(2) 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.

Effectively, the landlord must satisfy each component of the test below:

1. *Proof the loss exists,*
2. *Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act or an agreement*
3. *Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.*
4. *Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to minimize the loss or damage.*

The landlord bears the burden of establishing their claims by proving the existence of a loss stemming directly from a breach of the agreement or contravention of the *Act* by the tenant. Once established, the landlord must then provide evidence that can reasonably verify the monetary amount of the loss. Finally, the landlord must additionally show that reasonable steps were taken to address the situation and to mitigate the loss claimed.

The landlord takes the position that he is entitled to lost rent revenue of \$1,500.00 for the month of December 2017 because the tenants vacated the premises late in November 2017. I find that the landlord applied for an Order of Possession and unpaid rent of \$150.00 through the Direct Request process and the tenancy ended pursuant to that requested Order of Possession dated November 17, 2017 effective two days after service of the Order. The landlord chose to end the tenancy. Even if I were to accept that the tenant's conduct resulted in a loss of rent revenue the landlord has a duty to mitigate losses and I find that the sole December 05, 2017 advertisement submitted into evidence is insufficient representation of the other "numerous advertisements" purported by the landlord. I find that the landlord had a more substantive test to meet than simply providing a one minute posting. The landlord's burden was to provide sufficient evidence of mitigation. Provision of the new tenancy agreement indicating they were only able to re-rent the unit for January 2018 was also available to the landlord. I find the very limited sum of the landlord's evidence intended to prove they suffered a loss to be insufficient. I prefer the sum of the tenant's oral evidence as the more likely version of the facts in this regard, which indicates, on balance of probabilities, that the landlord re-rented the rental unit much earlier than portrayed. As

a result of all the above I find that the landlord's claim in this regard for loss of revenue must fail for lack of sufficient evidence and is **dismissed**, without leave to reapply.

The landlord states they received a set of access keys at the end of the tenancy while at the rental unit from an intervening Police officer, and then later discovered they did not work as intended. I find that I do not need to examine the conduct of the Police in respect to whether they actually tested the keys before handing them to the landlord. It must be noted that it was available to the landlord to personally test the keys before leaving the rental unit. Suffice it to state, the landlord has made a claim for compensation and I must look to them to support their claim pursuant to Section 7 of the Act. The burden of proving the existence of a loss falls on the landlord and they have not provided evidence of their claim the keys they received "did not work out". As a result this portion of the landlord's claim is **dismissed**, without leave to reapply.

As the landlord has had limited success in their application I find the landlord is entitled to recover a portion of their respective filing fee from the tenant in the amount of \$25.00. The security and pet damage deposits held by the landlord will be offset from the award made herein. *Calculations for a monetary Order is as follows*

Unpaid utilities to landlord	\$147.90
partial filing fee to landlord	\$25.00
<i>Minus the tenant's dual deposits of the tenancy in trust</i>	<i>-\$1500.00</i>
Net Monetary Order - Tenant	(\$1327.10)

I Order that the landlord may retain \$172.90 of the tenant's security and pet damage deposits of \$1500.00 and return the balance to the tenant, forthwith.

I Order that the original monetary Order of this matter dated August 02, 2018 is set aside and **I grant** the tenant a new Monetary Order in the amount of **\$1327.10**. This Order must be served on the landlord and if necessary may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Conclusion

The original Hearing Decision and Order dated August 02, 2018 are set aside and are of no effect.

The tenant's application is dismissed, without leave to reapply.

Portions of the landlord's application were granted and the balance dismissed, without leave to reapply.

The tenant is given a new Monetary Order for the balance of their tenancy deposits.

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: January 09, 2019

Residential Tenancy Branch