



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: FF, MNDCL-S, MNRL-S
 Tenants: FF, MNSD

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlords’ Application for Dispute Resolution was made on November 15, 2018, (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- a monetary order for utilities for the Landlord;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Tenants’ Application for Dispute Resolution was made on November 18, 2018, (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order granting the return of all or part of the security deposit; and
- an order granting recovery of the filing fee.

M.D. appeared for the Landlords as well as the Tenants attended the hearing at the appointed date and time, and provided affirmed testimony.

At the beginning of the hearing, the parties acknowledged receipt of their respective application packages and documentary evidence. The Tenants indicated that they received a portion of the Landlords evidence beyond the 14 days permitted. The Tenants did however confirm receipt and indicated that they had sufficient time to review the evidence and to respond to it during the hearing. No other issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

Preliminary Matters

In relation to the Landlord's Application for a monetary order for money owed or compensation for damage or loss, M.D. requested that the monetary amount be changed from \$14,318.33 to \$4,789.11. M.D stated that at the time of the Landlords' Application, they were uncertain as to the extent of their loss of rent, therefore they had incorporated the full amount of loss up until the end of the fixed term tenancy. M.D. testified that the Landlords have secured a new Tenant as of January 28, 2019, therefore are seeking compensation for loss of rent up until that date.

Issue(s) to be Decided

1. Are the Landlords entitled to a monetary order for unpaid rent or utilities, pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to a monetary order for money owed or compensation for damage or loss pursuant to Section 67 of the *Act*?
3. Are the Landlords entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
4. Are the Landlords entitled to retain the Tenants security deposit pursuant to Section 38 of the *Act*?
5. Are the Tenants entitled to an order granting the return of the security deposit, pursuant to Section 38 of the *Act*?
6. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. The parties testified that the fixed term tenancy began on July 21, 2018, and was meant to end on July 31, 2019. The parties agreed that the tenancy ended early on November 2, 2018 after the Tenants provided the Landlords with written notice to end tenancy on October 20, 2018. During the tenancy, rent in the amount of \$1600.00 per month was due on the first day of each month. The parties also agreed that the Tenants were required to pay 2/3 of the utility bills to the Landlords. The Tenants paid a security deposit of \$800.00 which the Landlords continue to hold.

The Landlords' Claim MD

The Landlords' monetary claims were set out on a Monetary Worksheet provided in the Application. M.D. revised the monetary amount sought to \$4,789.11.

The Landlords are seeking a monetary order in relation to three unpaid utilities bills;

A Fortis Gas Bill was submitted into evidence by the Landlords. The bill outlined an outstanding balance of \$53.07 relating to the Tenants' gas usage from September 14 to October 17, 2018. The Tenants agreed that they are responsible for paying this amount.

A Fortis Electricity Bill was submitted into evidence by the Landlords. The bill outlined an outstanding balance of \$135.46 relating to the Tenants' electricity usage from August 28 to October 28, 2018. The Tenants agreed that they are responsible for paying this amount.

A Fortis Gas Bill was submitted into evidence by the Landlords. The bill outlined an outstanding balance of \$67.71 relating to the Tenants' gas usage from October 18 to November 15, 2018. The Tenants agreed that they are responsible for paying only a portion of this bill up until the end of their tenancy on November 2, 2018.

The Landlords are also seeking \$4,532.87 for the cost of re-renting the rental unit and loss of rent. M.D. testified that she received an email containing a notice to end tenancy dated October 20, 2018, from the Tenants. The letter indicated that the Tenants intended on ending their tenancy on November 2, 2018, due to a breach of a material term of the tenancy agreement. The letter also indicated that the Tenants would be available to complete a condition inspection report on November 2, 2018, at 11:00 am. Furthermore, the notice included the Tenant's forwarding address. A copy of the notice was submitted in support.

There was no dispute that the tenancy ended on November 2, 2018. M.D. stated that the Tenants were not permitted to end their fixed term tenancy early and are seeking compensation for the cost of re-renting to rental unit, as well as the recovery of lost rent.

The Tenants claimed that the Landlords breached a material term of the contract, and felt justified in ending the tenancy early. S.B. testified that their fridge leaked for the majority of their tenancy. Furthermore, the Tenants indicated that the fridge began to grow mould which the Tenants claimed was a health risk. The Tenants provided documentary evidence in support. The parties agreed that the Landlords made attempts at fixing the fridge, however, it remained problematic which resulted in the Tenants' desire to end their tenancy early.

The Landlords are seeking compensation for placing an advertisement for the rental unit on November 17, 2018 in the amount of \$21.00. M.D. testified that in addition to this add, the Landlords made use of several free online groups to advertise the suite on October 31, 2018. The Tenants provided a copy of the ads in their submission.

The Tenants argued that the Landlords increased the amount of rent to \$1700.00 which is not mitigating their loss. M.D. responded that the increased rent was due to the fact that the Landlords decided to include utilities in the rent. M.D. testified that the Landlords did not receive much interest on the ads and therefore decided to drop the price of rent back down to \$1600.00 a month including utilities a month later.

M.D. stated that she held several showing and only had two applicants who she deemed unsuitable for the rental unit. M.D. testified that she determined that one of the applicant did not meet the financial requirements for the rental. The other applicant had a criminal record which he had not disclosed. For these reasons, M.D. continued her search to fill the rental unit. M.D. testified that she secured a suitable tenant on January 14, 2019, who will take possession of the rental unit on January 28, 2019.

The Landlords are seeking compensation for lost rent in the amount of \$4,511.87. M.D. testified that the Tenants paid \$81.67 for the month of November 2018, therefore the Landlords are seeking the remaining \$1,518.33. In addition, the Landlords are seeking compensation in the amount of \$1,600.00 for December 2018 and \$1,393.54 for rent up until January 28, 2019, the date upon which a new tenancy agreement with new tenants commences.

In response, the Tenants reiterated their position that they were justified in ending the tenancy based on the Landlords' breach of a material term relating to the ongoing issues with a leaking fridge and are therefore not required to pay any further rent.

Finally, the Landlords are seeking the recovery of their \$100.00 filling fee.

The Tenants' Claim SD

The Tenants are seeking the return of double their security deposit in the amount of \$1,600.00. S.B. testified that the Tenants served the Landlords with an email on October 20, 2018, outlining their intention to end their tenancy on November 2, 2018, due to a breach of a material term of the tenancy agreement. The letter also indicated that the Tenants would be available to complete a condition inspection report on November 2, 2018 at 11:00 am. Furthermore, the notice included the Tenants' forwarding address. A copy of the notice was submitted in support.

M.D. confirmed receiving the notice, and replied on October 31, 2018, indicating that the Landlords were unavailable for the condition inspection of the rental unit at 11:00 am due to prior commitments. Instead, the Landlords provided the Tenants with a final notice to complete the inspection at 4:00pm on November 2, 2018. The Tenants indicated that they had already scheduled the move for the morning and that they would already be out of town by that point.

M.D. indicated that the Landlords made further attempts at scheduling the inspection for November 5, 6, and 9 at 4:00 pm on each of the days. S.B. testified that the Tenants moved out of town on November 2, 2018, and it would be unreasonable for the Landlords to expect them to travel back to the rental unit to complete the condition inspection on a different date or time as it would require two hours of driving each way. The Tenants testified that they notified the Landlords that they would be moving out of town on October 20, 2018 and proposed the move out inspection date and time which worked for them on the same date.

The Tenants feel as though the Landlords extinguished their right to retain the security deposit as they did not attend the Tenants' proposed move out inspection on November 2, 2018, as well as failed to offer two other opportunities prior to issuing their final opportunity.

Lastly, the Tenants claimed \$100.00 in recovery of the filing fee paid to make the Tenants' Application.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlords to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlords did what was reasonable to minimize the damage or losses that were incurred.

The Landlord's Claim

In relation to the Landlords claim to recover unpaid rent in the amount of \$4,511.87 for November 2018, December 2018, and January 2019, it is important to consider if the Tenants were entitled to ending the fixed term tenancy early, do the Landlords breaching a material term of the tenancy agreement.

According to Section 45(3) of the Act; 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.

The Residential Tenancy Policy Guidelines (the “Police Guidelines”) offers some clarity around what constitutes a material term. According to Policy Guideline 8; a material term is a term that the parties both agree at the start of the tenancy, is so important that the most trivial breach of that term gives the other party the right to end the agreement.

Furthermore, Policy Guideline 8 indicates that in order to end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- (a) that there is a problem;*
- (b) that they believe the problem is a breach of a material term of the tenancy agreement;*
- (c) that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- (d) that if the problem is not fixed by the deadline, the party will end the tenancy.*

Although the Tenants felt that the lack of what they considered to be a properly functioning and sanitary fridge was a material term of the tenancy agreement, there is no testimony or documentary evidence before me that the parties understood and agreed either before or at the time the tenancy agreement was entered into, that the provision of a fridge meeting particular standards was a material term of the tenancy agreement. I further find that there is no evidence before me that the Tenants notified that Landlords in writing that there was a problem, that the problem is a breach of a material term, gave a deadline for fixing it and advised them that if it was not fixed by the deadline, they would end the tenancy.

I find that the Tenants had other remedies available to them at the time such as making an application for an order requiring the Landlords to make repairs pursuant to Section 32 of the *Act*. I find that the Tenants violated the *Act* by ending their fixed term tenancy early without cause.

I find that the Landlords have provided sufficient evidence to demonstrate that they have suffered a loss of rent in the amount of \$4,511.87 for November 2018, December 2018, and January 2019, as a result of the Tenants violating the *Act* by ending their fixed term tenancy. I also find that the Landlords mitigated their loss by placing several ads as early as October 31, 2018, to re-rent the rental unit. I find that it is reasonable that the Landlords raised the amount of rent to \$1,700.00 to include utilities. The Landlords eventually lowered the rent back down to \$1,600.00, however, experienced a lack of interest in the rental unit. I am satisfied that it took

until January 14, 2019, to secure a new tenancy, despite the Landlords best efforts, which is set to begin on January 28, 2019.

I find that the Landlords also incurred a loss of \$21.00 in relation to the ad placed on November 17, 2018.

With respect to the Landlords' claim for the unpaid utilities, the parties agreed that the Tenants are responsible and are willing to pay for both the Fortis Gas Bill in the amount of \$53.07 as well as the Fortis Electricity Bill in the amount of \$135.46. In regards to the Fortis Gas Bill in the amount of \$67.71, the Tenants stated that they are willing to pay the bill up until the day they ended their tenancy rather than November 15, 2018. I find that it would be unreasonable to expect the Landlords to cut off gas services due to the fact that the Tenants moved out prematurely, ending their commitment to their fixed term tenancy and paying their portion of the utilities. I find that the Landlords have established an entitlement to recovering the \$67.71 as well.

I find that the Landlords have established an entitlement to the return of \$256.24 for unpaid utilities.

Having been successful with their Application, I find the Landlords are entitled to the recovery of their filling fee.

In summary, I find the Landlord has demonstrated an entitlement to a monetary award of \$4,889.11, which has been calculated as follows:

Claim	Award
Unpaid Utilities:	\$256.24
Loss of rent:	\$4,511.87
Advertising costs:	\$21.00
Filling fee	\$100.00
TOTAL:	\$4,889.11

The Tenants' Claim

With respect to the Tenants' claim for \$1,600.00 for recovery of double their security deposit, section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. If a landlord fails to repay deposits or make a claim against them within 15 days, section 38(6) of the *Act* confirms the tenant is entitled to receive double the amount of the deposits.

In this case, the Tenants argument that the Landlords extinguished their right to claim against the security deposit has no effect, as extinguishment under either sections 24 and 36 of the *Act* only relate to claims for damage to the rental unit. In this case, the Landlord's claims do not relate to damage to the rental unit, as a result, whether they extinguished or not has no bearing on the outcome of the current Applications.

I find the Tenants provided the Landlord with their forwarding address in writing via email, which was received by the Landlord on October 20, 2018. I find that the tenancy ended on November 2, 2018, which was later than when the forwarding address was received. Therefore, pursuant to section 38(1) of the *Act*, the Landlords had until November 17, 2018, to repay the deposit or make a claim against it. I find that the Landlords submitted their Application on November 15, 2018, which is within the time limit permitted under the *Act*. Accordingly, I find the Tenants are not entitled to the return of double the amount of the deposit.

Having not been successful in their Application, I find the Tenants are not entitled to the recovery of their filling fee.

Pursuant to section 67 of the *Act*, I find that the Landlords have demonstrated an entitlement to retain the security deposit in the amount of \$800.00 in partial satisfaction of the monetary award granted. I grant the Landlords with a monetary order in the amount of \$4,089.11 (\$4,889.11 - \$800.00).

Conclusion

Pursuant to section 67 of the *Act*, the Landlords are granted a monetary order in the amount of \$4,089.11. The monetary order must be served on the tenants and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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*.

I believe that this decision has been rendered in compliance with the timelines set forth in section 77(1)(d) of the *Act* and section 25 of the *Interpretation Act*. In the event that this is not the case, I note that section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d).

Dated: February 21, 2019

Residential Tenancy Branch