



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TOP VISION REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL- S, MNRL-S, FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on November 18, 2018 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage;
- a monetary order for unpaid rent;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Tenants as well as the Landlord's agent, T.L., appeared at the appointed date and time, each providing affirmed testimony.

T.L. testified that he served the Tenants in person with the Application package and documentary evidence on November 24, 2018. The Tenants confirmed receipt. The Tenants testified that they served the Landlord in person near the end of January 2019. T.L. confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

All parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for damage, pursuant to Sections 37 and 67 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Sections 45 and 67 of the *Act*?

3. Is the Landlord entitled to retain the security deposit, pursuant to Section 38 of the Act?
4. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the Act?

Background and Evidence

Both T.L. and the Tenants testified and agreed to the following; the fixed term tenancy began on July 1, 2018 and was meant to end on June 30, 2019. Rent in the amount of \$3,500.00 was due to the Landlord by the first day of each month. The Tenants paid a security deposit in the amount of \$1,750.00 which is currently being held by the Landlord. Both parties submitted a copy of the tenancy agreement in support.

T.L. testified that he received a notice to end tenancy from the Tenants on September 20, 2018 indicating that the Tenants intended on vacating the rental unit on October 31, 2018. The Tenants and Landlord met on November 3, 2018 to discuss the condition of the rental unit. At that point, T.L. indicated that the locks needed to be changed as the Tenants reported that the keys had been stolen. T.L. also stated that further cleaning was required to the rental unit, as there were shoe scuff marks, on the floors, marks on the carpet, and that the cabinets were dirty. The Tenants agreed to have the locks changed and confirmed that they returned to further clean the rental unit, anticipating the return of their security deposit.

The Tenants testified that they provided T.L. with their forwarding address on November 3, 2018 on the condition inspection report. A copy of the condition inspection report was submitted by T.L. in support.

T.L. testified that he attended the rental unit on November 7, 2018 at which point he determined that the rental unit had still not been cleaned to his satisfaction. It was at this point that he decided to employ a cleaner to clean the rental unit as well as a locksmith to change the locks.

T.L. testified that the Landlord is seeking a monetary award in the amount of \$853.65. T.L. submitted a bill in the amount of \$223.65 in relation to having the locks changed to the rental unit. The Tenants stated that they agreed to pay for the costs of replacing the locks. T.L. also submitted a bill for cleaning costs in the amount of \$630.00. The Tenants did not agree that they should be responsible for cleaning costs as they left the rental unit reasonably clean.

The Landlord is also seeking monetary compensation for unpaid rent. T.L. testified that the Tenants entered into a fixed term tenancy agreement which was meant to end on June 30, 2019. T.L. stated that he received a notice to end tenancy from the Tenants on September 30, 2018 expressing their intent on vacating the rental unit on October 31, 2018. T.L. stated that he advertised the rental unit in early October 2018 and found a suitable Tenant to take possession of the rental unit beginning on December 1, 2018.

T.L. testified the Landlord is seeking a monetary order in the amount of \$3,525.00 in relation to the Tenants' obligation to pay for the month of November 2018 while the suite was unoccupied, as well as a \$25.00 service charge relating to the return of the Tenants' cheque.

In response, the Tenants stated that they ended their tenancy early due to the fact that there had been several issues during the course of the tenancy that went unaddressed by the Landlord. The Tenants testified that the Landlord left their possessions in the rental unit which were never moved out. The Tenants stated that they had no access to the carport, shed, as well as one of the bedrooms due to the fact that there was furniture left behind by the Landlord. The Tenants stated that they had asked T.L. on several occasions to move the furniture to no avail.

Furthermore, the Tenants testified that the electrical panel was left with no cover which caused them some concern. Other issues noted by the Tenants included the sensitivity of the fire alarm system as well as the hydro had been disconnected for a few hours one afternoon as a result of the Landlord not paying the Hydro bill. These factors combined with the Landlord's inaction in rectifying the issues led the Tenants to provide T.L. with their notice to end tenancy.

Analysis

Based on the affirmed oral testimony and documentary evidence, 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*. Pursuant to Residential Tenancy Policy Guideline #16 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 Landlord to prove the existence of the damage, 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 Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Landlord's claim seeking compensation for the replacement of the locks to the rental unit in the amount of \$223.65, the Tenants agreed to pay this amount in full as they were unable to return the keys to the landlord as they had been stolen. For these reasons, I find the Landlord has established an entitlement to this amount.

As for the Landlord's claim seeking compensation for cleaning in the amount of \$630.00, T.L indicated at the time of the move out inspection that the Tenants needed to spend some extra time cleaning the floors, carpet and cabinets. The Tenants testified that they returned to the unit to complete the required cleaning, leaving the unit reasonably clean. I find that the Landlord has provided insufficient evidence to demonstrate that further cleaning was required, which would justify hiring a cleaner in the amount of \$630.00. I dismiss the Landlord's claim for compensation relating to cleaning, without leave to reapply

In relation to the Landlord's application for a monetary order for unpaid rent in the amount of \$3,500.00 along with a service charge of \$25.00, I refer to the Residential Tenancy Policy Guideline #30 (the "Policy Guideline") which states that during the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties. A tenant may end the tenancy if the landlord has breached a material term of the tenancy agreement. The tenant must give proper notice under the Legislation. Breach of a material term involves a breach which is so serious that it goes to the heart of the tenancy agreement.

Policy Guideline #8 describes a material term as a term that the parties both agree 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.*

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.

In this case, I accept that the Tenants communicated their displeasure to the Landlord regarding the owner's possessions in the rental unit, an exposed electrical panel, a sensitive fire alarm system and a brief interruption in hydro service. I find however that the Tenants did not communicate that they believed these problems were a breach of a material term of the tenancy agreement, nor did they indicate that the problems needed to be fixed by a reasonable deadline or else the tenancy would end. I find that the Tenants only mentioned that they felt that these problems were a breach of a material term in their notice to end tenancy. For these reasons, I find that the Tenants did not provide adequate notice to the Landlord pursuant to section 45(3) of the *Act*.

I find that the Landlord has provided sufficient evidence to demonstrate that they have suffered a loss of rent in the amount of \$3,500.00 for November 2018 along with the bank service charge in the amount of \$25.00, 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 an ad in early October 2018 to re-rent the rental unit. I am satisfied that it took until December 1, 2018 to secure a new tenancy

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

Further, I find it appropriate in the circumstances to order that the Landlord is entitled to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$2,098.65, which has been calculated as follows:

Claim	Award
Cost of Replacing Locks:	\$223.65
Loss of rent:	\$3,500.00
Service Charge:	\$25.00
Filling fee	\$100.00
<i>Less security Deposit</i>	<i>(\$1,750.00)</i>
TOTAL:	\$2,098.65

Conclusion

The Landlord is granted a monetary order in the amount of \$2,098.65. This order must be served on the Tenant as soon as possible. If the Tenant fails to comply the monetary

order it 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*.

Dated: March 7, 2019

Residential Tenancy Branch