



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNR MNSD FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on January 4, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss;
- a monetary order for unpaid rent;
- an order that the Landlord be permitted to apply the security deposit held to any monetary award granted; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by T.V., an agent, who provided affirmed testimony. The Tenant did not attend the hearing.

On behalf of the Landlord, T.V. testified that the Application package was served on the Tenant by registered mail on January 9, 2019. The Application package was sent to the forwarding address provided by the Tenant on December 22, 2019. Tracking information and a Canada Post customer receipt were submitted in support. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. I find the Application package is deemed to have been received by the Tenant on January 14, 2019. The Tenant did not submit documentary evidence in response to the Application.

T.V. was provided with the 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 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

1. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Landlord entitled to a monetary order for unpaid rent?
3. Is the Landlord entitled to retain the security deposit held in partial satisfaction of the claim?
4. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the tenancy began on January 27, 2018, and was expected to continue to January 31, 2019. However, in an email dated November 7, 2018, the Tenant advised of her intention to end the tenancy on December 31, 2018, before the end of the fixed term. The Tenant vacated the rental unit on December 22, 2018. A copy of the Tenant's email was submitted with the Landlord's documentary evidence. During the tenancy, rent in the amount of \$2,000.00 per month was due on the first day of each month. In addition, the tenancy agreement confirms the Tenant's obligation to pay 2/3 of the utility charges. The Tenant paid a security deposit of \$1,000.00 and a pet damage deposit of \$1,000.00, which the Landlord holds.

The Landlord's claim is set out in a Monetary Order Worksheet, dated April 1, 2019 (the "Worksheet"). First, the Landlord claimed \$481.50 for unpaid utility charges. These were comprised of BC Hydro (\$321.55), Fortis BC (\$49.00), and Water (\$110.95) charges to the date the Tenant vacated the rental unit. Invoices showing the handwritten calculation of the amounts claimed were submitted with the Landlord's documentary evidence.

Second, the Landlord claimed \$258.05 in unpaid rent for the period from January 1-4, 2019. The Tenant paid rent to December 31, 2018, but the Landlord was unable to secure a new tenant until January 5, 2019.

Finally, the Landlord sought to recover the \$100.00 filing fee paid to make the Application, and requested that the Landlord be permitted to retain the security and pet damage deposits in partial satisfaction of the claim.

As noted above, the Tenant did not attend the hearing to dispute the Landlord's evidence.

Analysis

Based on the unchallenged and 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*. 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 or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. 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 for \$481.50 for unpaid utility charges, I find the Landlord has established an entitlement to the relief sought. The amounts claimed were based on calculations derived from previous invoices only to the date the Tenant vacated the rental unit. The Landlord is granted a monetary award in the amount of \$481.50.

With respect to the Landlord's claim for \$258.05 in unpaid rent, I find the Landlord has established an entitlement to the relief sought. The Tenant ended the fixed-term tenancy early. I accept the testimony of T.V. who confirmed the Landlord was unable to secure a new tenant until January 5, 2019, leaving January 1-4, 2019, unpaid. The Landlord is granted a monetary award in the amount of \$258.05.

Having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. I order that part of the security and pet damage deposits held be applied to the Landlord's monetary award in satisfaction of the claim.

Policy Guideline #17 states:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on

- *a landlord's application to retain all or part of the security deposit; or*
- *a tenant's application for the return of the deposit.*

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

[Reproduced as written.]

Therefore, pursuant to section 67 of the *Act* and Policy Guideline #17, I find the *Tenant* is entitled to a monetary order in the amount of \$1,160.45, which has been calculated as follows:

Claim	Amount
Utility charges:	\$481.50
Unpaid rent:	\$258.05
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$1,000.00)
<i>LESS</i> pet damage deposit:	(\$1,000.00)
TOTAL:	(\$1,160.45)

Conclusion

I order that the Landlord is permitted to retain \$839.55 from the security and pet damage deposits in partial satisfaction of the Landlord's claim.

Pursuant to section 67 of the *Act* and Policy Guideline #17, the *Tenant* is granted a monetary order in the amount of \$1,160.45. The order 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: April 29, 2019

Residential Tenancy Branch