



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NORTHSTAR LYON HOLDING
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on February 12, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

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

G.W. appeared as an Agent on behalf of the Landlord. Tenant J.B. attended the hearing for the Tenants. All in attendance provided affirmed testimony.

G.W. testified that he served the Tenants with the Landlord's Application and documentary evidence package by registered mail on February 13, 2019 to the Tenants' forwarding address which was provided to the Landlord during a previous dispute resolution hearing which was held on January 29, 2019. The Tenant stated that he did not receive the Landlord's mailing as the Tenants have since moved from the residence they had previously provided the Landlord with the forwarding address to. The Tenant stated that he only learned about the hearing after phoning the Residential Tenancy Branch at which point the Tenants were provided with the hearing information.

The Tenant stated that he emailed the Landlord on March 1, 2019 to provide the Landlord with the Tenants' new forwarding address. The Tenant stated that he also sent the Landlord the Tenants' new forwarding address via registered mail in early March 2019. G.W. confirmed receipt; however, indicated that it should not be the Landlord's responsibility to search for the Tenants in order to ensure they have been served.

The Tenant stated that he would like to proceed with the hearing in lieu of an adjournment, despite the fact that he did not receive the Landlord's hearing package or documentary evidence.

The Tenant testified that he served the Landlord with his documentary evidence by registered mail on April 22, 2019. G.W. confirmed receipt. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The 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 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, compensation, or loss, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to retain the security deposit, pursuant to Section 38 and 72 of the *Act*?
3. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the periodic month to month tenancy began on August 30, 2018 and ended on September 26, 2018 after the Tenants moved out of the rental unit. The Tenants paid the Landlord rent in the amount of \$875.00, as well as a security deposit in the amount of \$437.50 and a pet deposit in the amount of \$437.50 which the Landlord continues to hold.

G.W testified that the Landlord is seeking monetary compensation in the amount of \$875.00. G.W. testified that the Tenants moved out of the rental unit on September 26, 2018 without providing the Landlord with one month notice to end tenancy in writing. As a result, G.W. stated that he was unable to re-rent the rental until October 15, 2018. As such, the Landlord is seeking to retain \$437.50 of the Tenant's security deposit to compensate for the loss of rent.

The Tenant confirmed that the Tenants failed to provide adequate notice to the Landlord regarding their intentions to vacate the rental unit. Therefore, the Tenant agreed to the Landlord retaining \$437.50 from the Tenants' deposits held by the Landlord.

G.W. testified that the Landlord is seeking to be compensated a further \$437.50 for the cost associated with re-renting the rental unit. G.W testified that he works as an agent for the Landlord and that his fee to re-rent the rental unit each time is \$450.00. G.W. stated that he was required to place an advertisement and conduct showings to re-rent the rental unit. As the Landlord continues to hold \$437.50 of the Tenants' deposit, the Landlord is only seeking to retain this amount in satisfaction of their claim. The Landlord submitted a copy of an invoice in support. The parties stated that they had not agreed to a liquidated damages clause in tenancy agreement.

The Tenant stated that he does not feel as though the Tenants should be responsible for the cost of re-renting the rental unit. The Tenant stated that the Tenants had concerns regarding the rental unit during their tenancy which contributed to them moving without proper notice.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 45(1) of the Act authorizes a tenant to end a periodic tenancy by giving the Landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

I accept that the parties agreed that the Tenants ended the periodic tenancy without providing the Landlord with a notice to end tenancy effective on a date that is not earlier than one month after the date the Landlord received the notice, pursuant to Section 45 of the *Act*. I accept that the Tenant agreed to compensate the Landlord in the amount of \$437.50 as the Landlord was unable to re-rent the rental unit until October 15, 2018. In light of the above, I find that the Landlord is entitled to retain \$437.50 from the Tenant's deposits.

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 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.

The Landlord is seeking compensation in the amount of \$437.50 relating to the cost of re-renting the rental unit. G.W. testified that he charges the owner \$450.00 each time he needs to re-rent the rental unit. I find that the Landlord would have incurred this cost regardless if the Tenant's had provided sufficient notice to end tenancy or not.

I find that the Landlord has not suffered any additional loss as a result of the Tenants ending their tenancy without sufficient notice. Furthermore, I find that the parties had not agreed to a liquidated damages clause in their tenancy agreement, which represents a genuine pre-estimate of the loss of re-renting the rental unit at the time the contract is entered into. In light of the above, I dismiss the Landlord claim for \$437.50 in relating to the cost of re-renting the rental unit.

I find that the Landlord has established an entitlement to retain \$437.50 from the Tenant's security deposit for compensation relating to the loss of rent.

As the Landlord was partially successful in their Application, I find that the Landlord is entitled to the recovery of their filing fee in the amount of \$100.00.

The Tenants paid the Landlord \$875.00 for security and pet deposits, which the Landlord continues to hold. The Landlord has demonstrated an entitlement to a monetary award of \$537.50.

I find that the Tenants are entitled to the return of \$337.50, which represents the remaining portion of their deposit paid to the Landlord. Therefore, pursuant to section 67 of the *Act*, I grant the Tenants with a monetary order in the amount of \$337.50 (\$875.00 – \$537.50 = \$337.50).

Conclusion

The Tenants breached the Act by not providing the Landlord with sufficient notice to end tenancy. The Landlord has been granted a monetary award of \$537.50 which they are entitled to deduct from the Tenants' deposits.

The Tenants are granted a monetary order in the amount of \$337.50 for the return of the remaining portion of their deposits. The monetary should be served on the Landlord as soon as possible 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*.

Dated: May 15, 2019

Residential Tenancy Branch