



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

On March 12, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for damages and unpaid rent, to apply the security deposit against the claim, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord's Agent (the “Landlord”) attended the conference call hearing; however, the Tenants did not attend at any time during the 45-minute hearing. The Landlord testified that he served the Tenants with the Notice of Dispute Resolution Proceeding by sending it via registered mail on March 15, 2019. The Landlord provided a Canada Post tracking number and a copy of the receipt as evidence. The Landlord testified that he sent the package to the forwarding address that the Tenants had previously provided to the Landlord. After confirming, via the Canada Post website, that the package was delivered and signed for on March 19, 2019, I find that the Tenants have been duly served with the Notice of Dispute Resolution Proceeding in accordance with Section 89 the Act.

Rule 7.3 of the *Residential Tenancy Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenants did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the affirmed testimony and evidence as presented by the Landlord.

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

Should the Landlord receive a Monetary Order for damages and unpaid rent, in accordance with Section 67 of the Act?

Should the Landlord be authorized to apply the security deposit to the claim, in accordance with Sections 38 and 72 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

The Landlord provided the following undisputed evidence:

The Landlord provided a copy of the Tenancy Agreement and stated that the tenancy began on July 1, 2018. Although the Tenancy Agreement indicated conflicting evidence regarding the rental period, the Landlord testified that the Tenants were aware that they were signing a one-year, fixed term Tenancy Agreement. He stated that one of the tenants even initialled the corrected date for the end of the fixed term for June 30, 2019. The monthly rent was \$1,600.00 and the Landlord collected and still holds a \$800.00 security deposit.

The Landlord testified that the Tenants provided written notice on January 29, 2019, and that they planned to move out of the rental unit on February 28, 2019. The Landlord stated that he arranged a move-out inspection with the Tenants for February 28; however, the Tenants notified the Landlord, on February 28, and stated that they would not be attending the meeting. The Landlord stated that the rental unit was left in decent condition; however, the carpets required cleaning. The Landlord said that the keys for the rental unit were dropped off on March 1, 2019.

The Landlord explained that there was a term in the Tenancy Agreement that required the Tenants to clean the carpets upon vacating the rental unit. The Landlord stated that he had corresponded, copy of text provided, with the Tenants and they had provided consent to deduct the cost of the cleaning from their security deposit. The Landlord submitted a copy of the bill and is claiming the total amount of \$131.25, as a loss.

The Landlord pointed out term #5 in the Tenancy Agreement that held the Tenants responsible for liquidated damages, in the amount of \$625.00, if they ended the tenancy before the end of the fixed term. The Landlord is claiming the \$625.00 in liquidated damages.

The Landlord originally applied for dispute resolution and claimed a monetary loss of four months of rent (March – June 2019), due to the Tenants moving out four months before the end of the fixed term. However, the Landlord stated that he has found new

tenants for the rental unit as of June 1, 2019, and is only claiming the loss of three months, for a total of \$4,800.00.

The Landlord stated he received a false forwarding address from one of the Tenant's daughters in early March. He stated that he soon spoke with the other Tenant and was provided their forwarding address.

The Landlord testified that he began to advertise the rental unit for rent as soon as he received notice from the Tenants that they were planning on moving. The Landlord stated that he originally advertised the rental unit for \$1,600.00 a month; however, after a few showings, several that were in February with the Tenants still in the rental unit, he lowered the advertised monthly rent to \$1,550.00.

The Landlord stated he showed the rental unit between 8 or 9 times before he was able to rent it out for June 2019. The Landlord provided copies of three different websites to demonstrate where he advertised the rental unit.

The Landlord is claiming the loss of the cost of the carpet cleaning in the amount of \$131.25; the liquidated damages in the amount of \$625.00 and the loss of three months rent in the amount of \$4,800.00, for a total claim of \$5,556.25.

Analysis

Firstly, I will consider whether the Landlord is authorized to apply the security deposit to a claim of damages to the rental unit. Sections 23, 24, 35 and 36 of the Act speak to the requirements for condition inspection reports and the extinguishment of rights to claim against the security deposit. The Landlord provided testimony regarding the move-in inspection report and specifics to the attempt at a move-out inspection. As a result, I find that the Landlord showed diligence in participating in the inspections and completing written reports. I find that the Landlord is authorized to make a claim against the security deposit in regard to damages to the rental unit.

I also find that the Landlord did lawfully retain the security deposit as the Landlord applied for dispute resolution within 15 days of receiving the Tenants' forwarding address, in accordance with Section 38 of the Act. As the Landlord has lawfully retained the security deposit, I will consider the monetary claims and determine what, if any, of the security deposit should be returned to the Tenants.

Section 7(1) of the Act establishes that a party who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the other party for damage or loss that results from that failure to comply.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that the Landlord established that the Tenants had entered a one-year, fixed term tenancy and were responsible for paying a monthly rent of \$1,600.00. Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord a notice to end tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and, is the day before the day in the month that rent is payable under the Tenancy Agreement. In this case, I find that the Tenants breached Section 45(2) of the Act by giving the Landlord notice to end the tenancy prior to the end of the fixed term, that had been established as June 30, 2019.

Section 26 of the Act explains that the tenant must pay rent when it is due under the Tenancy Agreement, whether or not the landlord complies with this Act, the Regulations or the Tenancy Agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. As I do not have any evidence before me that the Tenants had a right under this Act to deduct any of their rent, I find that the Tenants are in breach of Section 26 of the Act.

After reviewing the undisputed testimony and evidence provided, I find that the Landlord has established a monetary claim in the amount of \$5,556.25, which includes \$4,800.00 in unpaid rent for the months of March, April and May 2019; \$625.00 in liquidated damages; and, \$131.25 for costs incurred for carpet cleaning, in accordance with Section 67 of the Act.

Before awarding a monetary claim to the Landlord, I have to consider Section 7(2) of the Act that states 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.

I accept the Landlord's testimony and evidence that he made a reasonable effort to find new tenants for the rental unit by advertising the rental unit soon after receiving notice that the Tenants intended on vacating the rental unit; that he advertised it on various websites; and, after limited success, lowered the rent to attract potential tenants. I find the Landlord attempted to mitigate his losses in accordance with Section 7(2) of the Act and as result, I award the full amount of the claim.

The Landlord has established a monetary claim, in the amount of \$5,656.25, which includes the full amount of his monetary claim and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenants' security deposit in the amount of \$800.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a Monetary Order for the balance of \$4,856.25 in accordance with Section 67 of the Act.

Conclusion

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$4,856.25. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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 27, 2019

Residential Tenancy Branch