



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANCHO MANAGEMENT SERVICES BC
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 April 9, 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;
- to retain the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30 P.M. on July 12, 2019 as a teleconference hearing. C.G. appeared on behalf of the Landlord and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that C.G. and I were the only persons who had called into this teleconference.

C.G. testified the Application and documentary evidence package was served to the Tenant by registered mail on April 11, 2019. A copy of the Canada Post registered mail receipt was submitted in support. Based on the oral and written submissions of the Applicant, and in accordance with Sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Landlord's Application and documentary evidence on April 16, 2019, the fifth day after the registered mailing. The Tenant did not submit documentary evidence in response to the Application.

C.G. was 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

C.G. testified that the tenancy began on March 1, 2018. The Tenant paid rent in the amount of \$980.00 which was due to the Landlord on first day of each month. The Tenant paid a security deposit in the amount of \$475.00, a parking key deposit in the amount of \$20.00, and a remote deposit in the amount of \$65.00, for a combined total of \$560.00 in deposits currently being held by the Landlord. C.G. testified that the tenancy ended on March 30, 2019 after the Tenant moved out of the rental unit.

C.G. testified that she received a phone call from the Tenant on March 25, 2019 during which the Tenant provided C.G. with her notice to end tenancy effective March 30, 2019. C.G. stated that during the phone call, the Tenant provided C.G. with her forwarding address. C.G. stated that she did not approve of the Tenant's notice to end tenancy, as the Tenant did not provide sufficient notice to end the tenancy. As such, C.G. stated that the Landlord was unable to re-rent the rental unit until May 1, 2019. C.G. stated that the Landlord is seeking to recover the loss of rent for the month of April 2019, in the amount of \$980.00.

C.G. stated that following the end of the tenancy, C.G. discovered that the rental unit required cleaning at the cost of \$50.00, as well as carpet cleaning in the amount of \$130.00. C.G. stated that the parties did not complete a condition inspection report at the end of the tenancy. C.G. stated that she did not offer the Tenant two opportunities to take part in a move out condition inspection. If successful, the Landlord is also claiming for the return of the filing fee paid to make the Application.

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 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.

According to Section 45 (1) of the *Act*, a Tenant may end a periodic tenancy by giving the Landlord notice to end the tenancy effective on a date that;

- (a) *is not earlier than one month after the date the landlord receives the notice, and*
- (b) *is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

In this case, I accept that the Tenant phoned C.G. on March 25, 2019 and provided her notice to end the tenancy effective on March 30, 2019. I find that the Tenant did not provide the Landlord with sufficient notice, pursuant to Section 45 of the *Act*. I accept that the Landlord was unable to re-rent the rental unit until May 1, 2019, as a result. As such, I find that the Landlord has established an entitlement to monetary compensation in the amount of \$980.00.

The Landlord has also claimed for cleaning the rental unit in the amount of \$50.00 and carpet cleaning in the amount of \$130.00. In this case, C.G. stated that a move out condition report was not completed between the parties and that the Landlord did not offer the Tenant two opportunities to take part in the inspection.

Section 23 and 35 of the Act directs a Landlord and Tenant to inspect the condition of a rental unit at both the beginning and end of the tenancy. The Landlord must offer the Tenant at least two opportunities for the inspections and the Landlord must complete condition inspection reports in accordance with the Regulations. Both parties must sign the condition inspection reports and the Landlord must give the Tenant a copy of the reports. The Landlord must make each inspection, complete and sign the reports without the Tenant if the Landlord has offered two opportunities for both the beginning and end of tenancy inspections and the Tenant does not participate on either of the occasions.

Sections 24(2) and 36(2) of the Act explain that the Landlord's right to claim against a security deposit for damage to the residential property is extinguished if the Landlord does not comply with Sections 23 or 35 of the Act. I find that the Landlord did not complete a move out inspection with the Tenant or offer two opportunities to the Tenant to take part in the inspection. As such, I find that the Landlord has extinguished their right to claim for damages against the security deposit. However, the Landlord may still claim against the security deposit for the loss of rent.

I find that the Landlord has provided insufficient evidence to support her claim for damages. As such, I dismiss the Landlord's claim for compensation relating to cleaning the rental unit without leave to reapply.

Having been partially successful, I find the Landlord is entitled to recover the filing fee paid to make the Application. I also find it appropriate in the circumstances to order that the Landlord retain the deposits 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 \$520.00, which has been calculated as follows:

Claim	Amount
Unpaid Rent	\$980.00
Filing fee:	\$100.00
<i>LESS</i> the deposits:	-(<i>\$560.00</i>)
TOTAL:	\$520.00

Conclusion

The Tenant has breached the Act by not providing the Landlord with sufficient notice to end tenancy pursuant to Section 45 of the *Act*. The Landlord is granted a monetary order in the amount of \$520.00. The order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of BC (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: July 15, 2019

Residential Tenancy Branch