



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S, MNRL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

The landlord's testimony is as follows. The one year fixed term tenancy began on May 15, 2018 but ended early on January 31, 2019. The tenant was obligated to pay \$1600.00 per month in rent in advance plus 30% of the gas bills and 50% of the electricity bills. At the outset of the tenancy the tenant paid an \$800.00 security deposit and an \$800.00 pet deposit which the landlord still holds. The landlord testified that the tenant broke the lease on short notice. The landlord testified that the tenant only gave six days' notice to move out. The landlord testified that they had a hard time renting the suite for February and March and were only able to find a tenant at a reduced rate of \$1450.00 for April 1, 2019. The landlord testified that the tenant did not pay his share of the utilities as agreed and as part of the tenancy agreement.

The landlord testified that they seek the liquidated damages as per their agreement, loss of revenue, unpaid utilities, a returned cheque fee for February 1, 2019 and the filing fee.

The landlord is applying for the following:

1.	Liquidated Damages	\$625.00
2.	Loss of Revenue Feb and March 2019	3200.00
3.	Fortis BC gas and electric	1327.74
4.	Return Cheque fee	30.00
5.	Filing Fee	100.00
6.	Minus deposits	-1600.00
7.		
8.		
9.		
10.		
	Total	\$3682.74

The tenant gave the following testimony. The tenant testified that his wife obtained a job in Vancouver and they had to leave on very short notice. The tenant testified that if the property manager had done his job they could have easily rented the unit. The tenant testified that he agrees with the liquidated damages cost. The tenant testified that he agrees that he owes some money for the utilities but it should be \$484.45. The tenant testified that he was told only two people lived in the upstairs portion but when he moved in he found five people living upstairs. The tenant testified that he came to an agreement with the upstairs tenant that he pays 30% of both the gas and electricity. The

tenant testified that the property manager agreed to it and made the adjustments to payments made to reflect 30%.

Analysis

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 that 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 claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. I address the landlords claim and my findings as follows.

Liquidated Damages- \$625.00

The tenant agrees that he is responsible for this claim, accordingly; I grant the landlord \$625.00.

Loss of Revenue - \$3200.00

The tenant only gave the landlord six days to find a new tenant. I find that due to the tenant's short notice the landlord was unable to rent the unit for February 2019 and they are entitled to the loss of February revenue for \$1600.00.

The landlord is not entitled to the loss of revenue for March 2019 as they did not provide sufficient evidence to show that they took all reasonable steps to mitigate their loss. The landlord did not provide sufficient documentation such as postings, open house dates, or a log reflecting the amount of showings, accordingly; I dismiss the claim for the loss of March 2019 revenue.

Fortis BC - \$1327.74

The tenant provided documentation to reflect that the property manager was aware of the reduction in electricity costs but did not note it anywhere. The tenant testified that as a result of two different property managers and an owner, there was constant miscommunication and confusion. During the hearing the landlord was unsure of what arrangements had been made by her property managers. Based on the above and on a balance of probabilities, I find that the calculation provided by the tenant of \$484.45 is the appropriate amount, accordingly; I grant the landlord \$484.45.

Returned Cheque Fee- \$30.00

The landlord was not entitled to cash the February rent cheque as the tenancy ended on January 31, 2019, this claim is dismissed.

The landlord is entitled to the recovery of the \$100.00 filing fee.

Conclusion

The landlord has established a claim for \$2809.45. I order that the landlord retain the \$1600.00 in deposits in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1209.45. This order may be filed in the 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: July 08, 2019

Residential Tenancy Branch