



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANCHO MANAGEMENT SERVICES B.C. LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNDCL –S, MNRL- S, MNDCT, MNSD, OLC

Introduction

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

- a monetary order for unpaid rent and 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
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;

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 unpaid rent and 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 recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary award equivalent to double the value of her security and pet deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to a monetary order as compensation? Is the tenant entitled to an order to compel the landlord to act in accordance with the Act, regulation or tenancy agreement?

Background, Evidence

The landlord's testimony is as follows. The one year fixed term tenancy began on January 1, 2018 but ended early on October 18, 2018. The tenant was obligated to pay \$980.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$475.00 security deposit, \$475.00 pet deposit and an \$85.00 fob deposit. The landlord testified that on October 8, 2018 the tenant only gave ten days' notice that she would be moving out. The landlord testified that they advertised in the Vancouver Sun from October 8, 2018 – December 31, 2018. The landlord testified that they were not able to rent the unit until January 1, 2019. The landlord seeks the recovery of advertising costs, loss of revenue for November of \$950.00, \$450.00 for liquidated damages, and \$42.50 for one missing fob, \$125.00 for carpet cleaning and the \$100.00 filing fee for this application.

The landlord is applying for the following:

1.	Advertising	\$1463.27
2.	November 2018 Rent	950.00
3.	Fob Replacement	42.50
4.	Carpet Cleaning	125.00
5.	Liquidated Damages	450.00
6.	Filing fee	\$100.00
	Total	\$3130.77

The tenant gave the following testimony. The tenant testified that she gave the landlord written notice on September 27, 2018. The tenant testified that she did not rescind the notice as alleged by the landlord. The tenant testified that she does agree that she is responsible for the carpet cleaning. The tenant testified that she returned the fobs to the mail slot as per property rules. The tenant testified that the landlord did not carry out her duties to rent the suite. The tenant testified that other than the carpet cleaning, she disputes the landlords' entire claim. The tenant testified that she wants the return of double her deposits as well compensation for having to wait so long to get her deposits back. The tenant seeks a total monetary award of \$2852.93

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below.

It is worth noting that the landlord was disorganized when presenting her claim. She was unable to answer basic questions or provide answers to the claim she put forth or able to explain the amount she noted on the application and what she was seeking on the day of the hearing. Much of the landlords claim lacked clarity or logic; specifically about whether deposits had been paid and if so how much. The landlord presented her evidence in a very disjointed and vague fashion. In addition, the landlord would add and subtract items from her claim during the hearing and would alter the amount she was seeking. The landlords' testimony and documentation were in conflict through much of the hearing, when it was; I considered the sworn testimony in coming to her monetary calculations. Residential Tenancy Branch Rules of Procedure 3.7 addresses this issue as follows.

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible.

To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

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.

Liquidated Damages - \$450.00

When a tenant breaches a fixed term tenancy agreement resulting in an early end to the tenancy, the landlord may incur costs of re-renting earlier than it would have without the breach. This may expose the landlord to extra costs of re-rental. However, when the sum of the liquidated damages is a high amount, it can be viewed as a penalty rather than the actual cost of re-rental. While the landlord testified that she incurred costs for advertisements in the newspaper this did not satisfy me that they were attempting to mitigate the losses. The landlord testified that as a large company they run the advertisements continuously even when they don't have suites for rent. I find this advertisement cost is a cost they chose to incur as an in house policy when they could have easily advertised online to numerous free platforms. The landlord has not met its burden to show that the liquidated damages are intended to cover the cost of re-rental. Accordingly, the landlord's claim for liquidated damages in the amount of \$450.00 is dismissed without leave to reapply.

November 2018 Rent - \$950.00.

The landlord testified that the tenant rescinded her notice from September 27, 2018 however the landlord failed to provide sufficient evidence to support that position. In addition, the landlord did not provide sufficient evidence to show that all reasonable steps were taken to re-rent the unit such as lowering the price, offering flexible terms or holding open houses. I find that the tenant gave proper notice to end the tenancy and that the landlord failed to take reasonable steps to re-rent it, accordingly, this portion of the landlords' application is dismissed.

Carpet Cleaning - \$125.00

The tenant accepts responsibility for this claim; accordingly the landlord is entitled to \$125.00 for carpet cleaning.

Fob -\$42.50

The tenant testified that she returned the fob to the mail drop box as per property rules, the landlord did not provide sufficient evidence that the fob was not returned. The landlord was rather vague and unclear as to whether there was even a fob or pet deposit and didn't dispute that the tenant returned it. Based on the contradictory and insufficient evidence before me, I dismiss this portion of the landlords claim.

The landlord was only successful in the claim that the tenant agreed to, accordingly they are not entitled to the recovery of the filing fee.

I now address the tenants' application as follows.

The tenant was seeking a monetary award as compensation for having to wait so long for the return of her deposits. Like the landlord, the tenant was also very disorganized in submitting her evidence and presenting her claim. Despite my three attempts to obtain the calculations, justifications and final amount sought for compensation, the tenant continually changed the total and referred to non-related issues. In addition to the lack of clarity, the tenant did not provide sufficient evidence to show why she should be entitled to compensation beyond the doubling provision under Section 38 of the Act and how the landlord was in contravention of any specific section of the Act, accordingly; I dismiss this portion of the tenants claim.

Double the Security and Pet Deposits $\$950.00 \times 2 = \1900.00

As a result of hearing that the parties were involved in on February 26, 2019 the tenant provided her forwarding address to the landlord on that date. The landlord applied to retain the deposit on March 4, 2019. Section 38 addresses the issue before me as follows:

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do **one of the following**:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

As the landlord has filed an application to retain the deposit in accordance with the above section, the doubling provision does not apply. However, the tenant is entitled to the return of her pet, security and fob deposits that equal \$1035.00 - \$125.00 for the carpet cleaning cost the landlord was granted for a total and final amount owing to the tenant of \$910.00.

I need not make a finding to have the landlord comply with the Act, regulation or tenancy agreement as the monetary order is sufficient.

Conclusion

I grant the tenant an order under section 67 for the balance due of \$910.00. 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: June 25, 2019

Residential Tenancy Branch