



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act ("Act"). The landlord applied for authority to keep all or part of the tenant's security deposit, a monetary order for money owed or compensation for damage or loss and for loss of rent, and for recovery of the filing fee paid for this application.

The landlord's agent (hereafter "landlord") attended the telephone conference call hearing; the tenants did not attend.

The landlord said he served tenant CDH with the application for dispute resolution and notice of hearing by personal service and to tenant DKJB by registered mail. The landlord provided the tracking number for the registered mail, which is located on the style of cause page in this Decision.

Based upon the submissions of the landlord, I accept the tenants were served notice of this hearing and the landlord's application in a manner complying with section 89(1) of the Act and the hearing began in the tenants' absence.

The landlord was provided the opportunity to present his evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, digital, and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure ("Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary Issue

Although the tenants were not present at the beginning of the hearing, tenant DKJB called into the hearing after 11 minutes. The tenant at first began speaking loudly and continuously. He also would not stop speaking to listen to instructions or be provided a status of the hearing. I found it was necessary to place the tenant on mute in order to provide instructions and an update of the hearing.

When the landlord finished his testimony, I was unable to return the tenant to the telephone conference. I asked the tenant to disconnect and to dial back into the hearing. The tenant did so.

The tenant was provided the opportunity to provide his evidence, orally. I recognize the tenant was upset; however, there were no further issues.

Issue(s) to be Decided

Is the landlord entitled to authority to keep all or part of the tenants' security deposit, further monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The landlord submitted a written tenancy agreement showing that this one year, fixed term tenancy began on October 31, 2018, ended on or before June 1, 2019, monthly rent was \$2,100.00, and the tenants paid a security deposit of \$1,050.00. The landlord has retained the security deposit.

The landlord has presented a detailed monetary claim, as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Re-renting fee	\$1,050.00
2. Rent for June 1-15 th , 2019	\$1,050.00
3. Unpaid hydro	\$36.75
4. Unpaid Fortis	\$173.28
5. Unpaid hydro	\$197.22
6. Unpaid Fortis	\$88.94
7. Unpaid Fortis	\$79.81

8. Estimated Unpaid hydro	\$164.73
9. Fortis for May 10- June 5	\$69.16
10. Register mail and filing fee	\$139.75
TOTAL	\$3,049.64

In support of his application, the landlord submitted that they found out on June 1, 2019, that the tenants had vacated the rental unit after hearing from a neighbour. Thereafter, the landlord submitted he called and texted the tenants, but did not receive a response.

The landlord submitted that as the tenants vacated the rental unit prior to the end of the fixed term, the landlord is entitled to the liquidated damages of \$1,050.00, as per the term of the written tenancy agreement, in the addendum portion.

As to the loss of rent, the landlord submitted they are entitled to receive the loss of rent for the first half of June, as they received no notice from the tenants they were vacating the rental unit. The landlord submitted that they successfully re-rented the rental unit beginning June 16, 2019.

As to the unpaid utilities, the landlord submitted that as per the written tenancy agreement, the tenants were to pay 60% of the hydro and gas, but failed to pay those costs. These costs were shared with the tenants in the lower rental unit.

In response to my inquiry, the landlord submitted that he either called or texted the tenants with notification of the utilities bills, and if they had a question, he would show them the bills. Otherwise, according to the landlord, he just informed them of the amount.

As per his evidence, the landlord submitted he only received one e-transfer for the bills, and on May 6, 2019, the tenant said he would pay the bills on the 20th or 25th.

The landlord's additional relevant evidence included a condition inspection report ("CIR"), an accounting of the utility bills, text messages between the parties, copies of the utility bills, and a written notice to vacate signed by tenant CDH, effective June 7, 2019.

Tenant's response-

The tenant submitted that they did not vacate the rental unit, as one of the tenants' father lived with them.

The tenant submitted that there were multiple people living downstairs, at least four extra people, who never worked and used the washer and dryer constantly while he and his wife were at work.

The tenant submitted that he was forced to move, as the tenants downstairs were threatening his family, that he informed the landlord what was going on in the lower rental unit. The tenant submitted that as the landlord did nothing about the issues with the lower tenants, he informed the landlord they were vacating.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. In this case, the landlord has the burden of proof to substantiate his claim on a balance of probabilities.

Liquidated damages-

Residential Tenancy Branch ("RTB") Policy Guideline #4 (Liquidated Damages) states that in order to be enforceable, a liquidated damages clause in a tenancy agreement, in this case, term 1 in the Addendum, must be a genuine pre-estimate of loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. If the liquidated damage clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible. The landlord claims the liquidated damages were intended to compensate them for their time and expense in advertising the rental unit as a result of the early end to tenancy by the tenant.

In the case before me, I find the landlord submitted sufficient evidence that the tenants agreed that the liquidated damages clause was a genuine estimate of costs to re-rent the rental unit and I approve their claim for \$1,050.00.

Loss of rent-

Under section 45(2) of the Act, a tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term. In this case, the written tenancy agreement shows the fixed term ended on October 31, 2019.

In the case before me, I accept that the tenants provided insufficient notice that they were ending the fixed term tenancy agreement prior to the end of the fixed term and I find the tenants were responsible to pay monthly rent to the landlord until the end of the fixed term, subject to the landlord's requirement that they take reasonable measures to minimize their loss.

I find it reasonable that the landlord would be unable to find a new tenant for June 1, 2019, as the evidence shows that the tenants provided written notice they were vacating on June 7, 2019. The landlord provided sufficient evidence that the tenants did not pay rent for June 2019.

I find the landlord submitted sufficient evidence that they minimized their loss, as new tenants were secured for June 16, 2019. I therefore find the landlord is entitled to a monetary award of \$1,050.00 for loss of rent for June 1-15, 2019.

Unpaid utilities-

Under the written tenancy agreement, the tenants were obligated to pay for 60% of the hydro and gas bills. I find the landlord submitted sufficient evidence to show that the tenants, owed, but failed to reimburse the landlord these expenses.

As to that amount, I find the landlord is entitled to a monetary award for unpaid hydro of \$233.97, comprised of \$36.75 for December 14-February 13 and \$197.22 for February 14-April 15, 2019.

I also find the landlord is entitled to a monetary award for unpaid gas of \$342.03, comprised \$173.28 for February 9-March 12, \$88.94 for March 13-April 19, and \$79.81 for April 10-May 9, 2019.

As to the landlord's claim for unpaid hydro and gas bills, as these amounts were only estimates, I find the landlord's claim was premature at the time the application was filed. I dismiss the landlord's claim of \$164.73 for estimated unpaid hydro and \$69.16 for estimated unpaid gas, with leave to reapply.

Registered mail costs-

The Act does not provide for the reimbursement of expenses related to disputes arising from tenancies other than the filing fee. The claim for \$39.75 is dismissed.

I grant the landlord recovery of their filing fee of \$100.00.

Due to the above, I find the landlord is entitled to a monetary award of \$2,776.00, comprised of liquidated damages of \$1,050.00, unpaid rent of \$1,050.00, unpaid hydro for \$233.97, unpaid gas for \$342.03, and the filing fee paid for this application in the amount of \$100.00.

At the landlord's request, I direct them to retain the tenants' security deposit of \$1,050.00 in partial satisfaction of their monetary award of \$2,776.00. I therefore grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$1,726.00, which is included with their decision.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are advised that costs of such enforcement may be recoverable from the tenants.

Conclusion

The landlord's application for monetary compensation is granted and they have been granted a monetary award of \$2,776.00.

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: August 7, 2019

Residential Tenancy Branch