



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNDCL-S MNDL-S MNRL-S

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on August 9, 2018 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, site, or property;
- a monetary order for money owed or compensation for damage or loss;
- a monetary order for unpaid rent;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Landlord's Agents, C.M, H.K., and K.S. attended the hearing at the appointed date and time and provided affirmed testimony.

The hearing was scheduled for 1:30pm on September 9, 2019 as a teleconference hearing. C.M, H.K., and K.S. appeared on behalf of the Landlord and provided affirmed testimony. No one appeared for the Tenants. The conference call line remained open and was monitored for 23 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.M, H.K., K.S., and I were the only persons who had called into this teleconference.

The Landlord's Agents testified that the Landlord's Application was served to the Tenants by registered mail. Copies of the Canada Post registered mail receipts were submitted confirming the mailings took place on June 4, 2019. The Landlord's Agents testified that the Landlord's documentary evidence package was also served to the Tenants by registered mail on August 21, 2019. 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 Tenants are deemed to have been served with the Landlord's Application on June 9, 2019 and the Landlord's documentary evidence on August 26, 2019, the fifth day after their registered mailings. The Tenants did not submit documentary evidence in response to the Application.

The Landlord's Agents were 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 to the rental unit, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
4. Is the Landlord entitled to retain the security deposit and pet deposit, pursuant to Section 38 and 72 of the *Act*?
5. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord's Agents stated that the tenancy began on August 1, 2016. By the end of the tenancy, the Tenants paid rent in the amount of \$862.78 which was due to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$400.00 as well as a pet damage deposit in the amount of \$200.00, both of which the Landlord currently holds. The Landlord's Agents stated that the tenancy ended on May 13, 2019 once the Tenants vacated the rental unit.

The Landlord's Agents testified that the Tenants provided the Landlord with written notice to end their tenancy on April 2, 2019 with an effective vacancy date of April 30, 2019. The Landlord's Agents stated that the Tenants had requested a transfer to a different rental unit, owned by the same Landlord in Alberta. The Landlord's Agents

stated that they accepted the Tenants' notice to end tenancy effective April 30, 2019. The Landlord provided a copy of the notice in support.

The Landlord's Agents stated that they secured a new occupant during the month of April 2019 to move into the rental unit on May 1, 2019. The Landlord's Agents stated that the Tenants did not vacate the rental unit on April 30, 2019 as they had indicated in the notice to end tenancy. Instead, the Landlord's Agents stated that the Tenants served the Landlord with a notice to cancel their notice to end tenancy on May 1, 2019. The Landlord's Agents indicated that the Landlord did not consent to extending the tenancy.

The Landlord's Agents stated that the new occupant was unable to occupy the rental unit as the Tenants continued to occupy it. The Landlord's Agents stated that they were able to provide the new occupant with a different unit; however, the new unit was not ready until May 6, 2019. As a result, the Landlord gave the new occupant a credit of \$201.61 towards the May 2019 rent as they were unable to move in until May 6, 2019. The Landlord is seeking to recover the loss associated with providing the new occupant with the credit in the amount of \$201.61.

The Landlord's Agents stated that the Tenants vacated the rental unit on May 13, 2019 by dropping off the keys to the Landlord and stated that they would be unable to take part in a move out condition inspection. The Landlord's Agents stated that the Tenants did not pay rent for the month of May 2019. Furthermore, the Landlord's Agents stated that they were unable to re-rent the rental unit until June 1, 2019. The Landlord is claiming for unpaid rent for the month of May 2019 in the amount of \$862.78.

The Landlord is also claiming for cleaning cost in the amount of \$150.00 for cleaning of the rental unit once the tenancy ended. The Landlord is seeking \$50.00 to replace broken blinds, \$50.00 for garbage removal, and \$15.00 for the replacement of light bulbs. The Landlord provided a copy of the condition inspection report, photos of the condition of the rental unit at the end of the tenancy, as well as receipts relating to the expenses in support. If successful, the Landlord is also seeking the return of the filing fee.

Analysis

Based on the uncontested and 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*. 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 Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlords did what was reasonable to minimize the damage or losses that were incurred.

In this case, the Tenants provided the Landlord with their notice to end tenancy with an effective vacancy date of April 30, 2019. I accept the Landlord's Agents testimony that the Tenants did not vacate the rental unit until May 13, 2019, therefore I find that the Tenants were overholding. I accept the Landlord's Agents' testimony that the Tenants did not pay rent for the month of May 2019 and that the Landlord was unable to re-rent the rental unit until June 1, 2019.

Section 57 of the *Act* defines an "overholding tenant" as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. The Section goes on to say a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Residential Tenancy Policy Guideline #3 states a tenant is not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the Act; however, if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises.

In this case, I find that the Tenants overheld the rental unit until May 13, 2019. Furthermore, I find that the Landlord was unable to re-rent the rental unit until June 1, 2019 as the Landlord was unsure as to when the Tenants would provide the Landlord with vacant possession of the rental unit. As such, I find that the Landlord has established an entitlement to a monetary award in the amount of \$862.78 for over holding and loss of rent for the month of May 2019.

The Landlord is claiming for \$201.61 in relation to a credit that was paid to the new occupant who was meant to move into the rental unit on May 1, 2019, however, was unable to do so as the Tenants were still occupying the rental unit. I accept that the Landlord provided the new occupant a different unit, which was not available until May 6, 2019; therefore, the Landlord gave the new occupant a credit in the amount of \$201.61.

In this case, I find that the Landlord provided insufficient evidence to demonstrate that a credit was paid to the new occupant. Furthermore, I find that the fact that the other rental unit was not available to the new occupant until May 6, 2019 was not a result of the Tenants' actions; therefore, I dismiss the Landlord's claim to recover \$201.61 without leave to reapply.

The Landlord is claiming for cleaning cost in the amount of \$150.00 for cleaning of the rental unit once the Tenants vacated the rental unit. The Landlord is seeking \$50.00 to replace broken blinds, \$50.00 for garbage removal, and \$15.00 for the replacement of light bulbs. The Landlord provided a copy of the condition inspection report, photos of the condition of the rental unit at the end of the tenancy, as well as receipts in support. I find that the Landlord has established an entitlement to monetary compensation in the amount of \$265.00 to cover these costs.

Having been successful, I find the Landlords are entitled to recover the \$100.00 filing fee paid to make the Application. I also find it appropriate in the circumstances to order that the Landlord retain the security and pet damage deposit 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 \$627.78, which has been calculated as follows:

Claim	Amount
Unpaid/loss of rent May 2019:	\$862.78
Cleaning and repairs	\$265.00
Filing fee:	\$100.00
<i>LESS</i> security and pet deposit:	-(<i>\$600.00</i>)
TOTAL:	\$627.78

Conclusion

The Tenants breached the Act by over holding the rental unit and leaving the rental unit unclean and with some damage. The Landlord is granted a monetary order in the amount of \$627.78. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (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: September 11, 2019

Residential Tenancy Branch