



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution, made on June 2, 2019 (the "Application"). The Landlords 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 1:30pm on September 16, 2019 as a teleconference hearing. Only the Landlords appeared and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 18 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 the Landlords and I were the only persons who had called into this teleconference.

The Landlords testified the Application and documentary evidence package was served to the Tenant by registered mail on June 8, 2019, to the forwarding address that the Tenant provided. A copy of the Canada Post registered mail receipt was submitted in support. Based on the oral and written submissions of the Applicants, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on June 13, 2019, the fifth day after their registered mailing. The Tenant did not submit documentary evidence in response to the Application.

The Landlords 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. Are the Landlords entitled to a monetary order for compensation, pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to retain the security deposit, pursuant to Section 38 and 72 of the *Act*?
3. Are the Landlords entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlords testified that the fixed term tenancy started on February 1, 2019 and was meant to end on January 31, 2020. The Tenant paid rent in the amount of \$1,500.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$750.00, which the Landlords continue to hold. The Landlords stated that the Tenant vacated the rental unit on April 17, 2019.

The Landlords are seeking compensation in the amount of \$750.00 in relation to the Tenant breaking the fixed term tenancy by moving out early. The Landlords stated that the Tenant provided them with his Notice to End Tenancy on April 1, 2019 with an effective vacancy date of April 12, 13 or 14, 2019. The Landlords stated that the Tenant paid rent in full for April 2019 before moving out of the rental unit on April 17, 2019. The Landlords stated that they tried to re-rent the rental unit; however, was unable to find a suitable occupant until May 16, 2019. As such, the Landlords are seeking to recover the half month of rent from May 1 to 15, 2019 in the amount of \$750.00.

The Landlords stated that the parties took part in a move out inspection at the end of the tenancy at which point the parties agreed that the Landlord would deduct \$50.00 from the Tenant's security deposit for damage caused to the floor. The Landlords stated that the Tenant provided them his forwarding address on May 21, 2019. The Landlords continue to hold \$700.00 of the Tenant's security deposit after the deduction. The Landlords are seeking to retain this amount towards their claim. If successful, the Landlords are also seeking 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:

The Landlords are claiming \$750.00 as they were unable to re-rent the rental unit for from May 1 to 15, 2019 as a result of the Tenant ending the fixed term tenancy early.

According to the Residential Tenancy Policy Guideline #30 (the "Policy Guideline"); during the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties. A tenant may end the tenancy if the landlord has breached a material term of the tenancy agreement. The tenant must give proper notice under the Legislation. Breach of a material term involves a breach which is so serious that it goes to the heart of the tenancy agreement.

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 Landlords 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 Landlords 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.

I accept that the parties entered into a fixed term tenancy which was meant to end on January 31, 2020. I accept that the Tenant provided his notice to end tenancy to the Landlord on April 1, 2019 before vacating the rental unit on April 17, 2019. I accept that the Landlord had advertised to re rent the unit; however, was unable to find a new occupant until May 16, 2019. I find that the Tenant was not entitled to end the fixed term tenancy early, therefore is responsible to pay rent from May 1 to 15, 2019 in the amount of \$750.00.

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 Landlords retain the remaining portion of the Tenant's security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlords are entitled to a monetary order in the amount of \$150.00, which has been calculated as follows:

Claim	Amount
Rent May 1-15, 2019	\$750.00
Filing fee:	\$100.00
<i>LESS</i> remaining security deposit:	<i>-(\$700.00)</i>

TOTAL:	\$150.00
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Conclusion

The Tenant has breached the Act by ending the fixed term tenancy early. The Landlord is granted a monetary order in the amount of \$150.00. 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: September 17, 2019

Residential Tenancy Branch