



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution, made on June 4, 2019 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent;
- to retain the security deposit; and
- an order granting recovery of the filing fee.

The Tenant as well as the Landlord attended the hearing at the appointed date and time and provided affirmed testimony.

The Landlord testified that he served his Application and documentary evidence package to the Tenant by registered mail on June 12, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Tenant confirmed that she did not submit any documentary evidence in preparation for the hearing.

The parties 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 unpaid rent, 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 Landlord submitted a copy of the tenancy agreement between the parties which states that the fixed term tenancy began on March 1, 2019 and was meant to end on February 28, 2020. The Tenant was required to pay rent in the amount of \$1,075.00 which was due to be paid on the first day of each month to the Landlords. The Tenant paid a security deposit in the amount of \$537.50 which the Landlords continue to hold. The Landlords stated that the tenancy ended on May 31, 2019.

The Landlords are seeking compensation in the amount of \$1,075.00 in relation to the Tenant breaking the fixed term tenancy by moving out early. The Landlord stated that the Tenant provided them with her Notice to End Tenancy on May 1, 2019 with an effective vacancy date of May 31, 2019. The Landlord stated that they tried to re-rent the rental unit; however, were unable to find a suitable occupant until July 1, 2019. As such, the Landlord is seeking to recover the month of rent for June 2019 in the amount of \$1,075.00.

In response, the Tenant stated that she decided to end the fixed term tenancy early as she had to relocate for employment purposes. As such, the Tenant stated that she gave the Landlords one month notice to end tenancy and was very accommodating in relation to showing the rental unit to prospective occupants.

The Landlord is seeking \$21.00 for the replacement of the lock to the rental unit as the Tenant did not return the key to the Landlord. In response, the Tenant stated that she was waiting until the Landlord returned her security deposit before returning the key to the Landlords.

The Landlords are also claiming \$28.00 in relation to advertising costs associated with re-renting the rental unit following the end of the tenancy.

The Landlord stated that the Tenant provided her forwarding address on May 31, 2019. The Landlords continue to hold the Tenant's security deposit in the amount of \$537.50. 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 \$1,075.00 as they were unable to re-rent the rental unit for June 2019 due to 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 February 28, 2020. I accept that the Tenant provided her notice to end tenancy to the Landlord on May 1, 2019 before vacating the rental unit on May 31, 2019. I accept that the Landlord had advertised to re rent the unit; however, was unable to find a new occupant until July 1, 2019. I find that the Tenant was not entitled to end the fixed term tenancy early, therefore is responsible to pay rent for June 2019 in the amount of \$1,075.00.

The Landlord is claiming \$21.00 in relation to replacing the lock to the rental unit as a result of the Tenant not returning the key at the end of the tenancy. Section 37 of the *Act* states that when a tenant vacates a rental unit, the tenant must give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property. I accept that the parties agreed that the Tenant did not return the key at the end of the tenancy. As such, I find that the Landlord is entitled to a monetary award in the amount of \$21.00.

The Landlord is also claiming \$28.00 in relation to the costs associated with re-renting the rental unit.

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into. In this case, I find that the parties had not agreed to a liquidated damages clause. As such, I find that the Landlord is not entitled to the return of the \$28.00 for advertising the rental unit.

Having been partially 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 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 \$658.50, which has been calculated as follows:

Claim	Amount
Rent June 2019	\$1,075.00
Lock replacement	\$21.00
Filing fee:	\$100.00
<i>LESS</i> remaining security deposit:	-(<i>\$537.50</i>)
TOTAL:	\$658.50

Conclusion

The Tenant has breached the Act by ending the fixed term tenancy early and not returning the key to the Landlord at the end of the tenancy. The Landlords are granted a monetary order in the amount of \$658.50. 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