



Dispute Resolution Services

Page: 1

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 Landlords' Application for Dispute Resolution, made on December 18, 2019 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent;
- a monetary order for damage, compensation, or loss; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on May 22, 2020 as a teleconference hearing. The Landlord P.D. and the Landlord's Agent P.D. attended the hearing at the appointed date and time. No one appeared for the Tenants. The conference call line remained open and was monitored for 25 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 Landlord, the Landlord's Agent, and I were the only persons who had called into this teleconference.

The Landlord testified that the Tenant C.M. provided the Landlord with her forwarding address via email on December 22, 2019. The Landlord provided a copy of the email in containing the Tenant's address in support. The Landlord stated that she served her Application and documentary evidence to the C.M.'s forwarding address on December 23, 2019. The Landlord provided a copy of the registered mail receipt in support.

The Landlord stated that the registered mail sent to Tenant C.W. was returned unclaimed. As such, the Landlord has applied for substitute service to serve the Tenant via email, given that the Landlord was able to maintain contact with the Tenant via email. The Landlord stated that she also served the Tenants the Application and documentary evidence on December 23, 2019 via email.

In this case, the Landlord provided sufficient evidence that she received the Tenant's forwarding address via email on December 22, 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 Application and documentary evidence on December 27, 2019, the fifth day after the registered mailing.

As I have found that the Tenants were sufficiently served in accordance with the *Act*, the Landlord's Application for substitute service is not necessary. The Tenants did not submit documentary evidence in response to the Application.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to a monetary order for damage, compensation or loss, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to an order granting the recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord testified that the fixed term tenancy started on August 1, 2018 and was meant to end on July 31, 2019, at which point it would covert to a periodic tenancy. During the tenancy, the Tenants were required to pay rent in the amount of \$2,300.00 to the Landlords, which was due on the first day of each month. The Tenants paid a security deposit in the amount of \$1,150.00 which the Landlords continue to hold. The Landlords provided a copy of the tenancy agreement in support.

The Landlord stated that the Tenants provided their notice to end tenancy to the Landlords on December 31, 2018 with an effective date of January 31, 2019. The Landlord stated that the parties had agreed to a one year fixed term tenancy and that the Tenants were not entitled to ending the tenancy early.

The Landlord stated that she immediately made attempts at re-renting the rental unit, however was unable to do so until March 1, 2019. The Landlord stated that she lowered the rent by \$100.00 to \$2,200.00 in an attempt to attract more interest in the rental unit given that the people are less likely to move during the winter months. The Landlords provided a copy of the rental advertisement in support.

The Landlords are claiming the loss of rent in the amount of \$2,300.00 for the month of February as the rental unit remained vacant until March 1, 2019. The Landlords are also

claiming \$500.00 which represents the difference in the rent from \$2,300.00 to \$2,200.00 for each of the remaining five months left in the fixed term tenancy.

The Landlord stated that the Tenants failed to pay three outstanding utility bills totalling \$261.69. The Landlord stated that utilities were not included in the rent and was the Tenants' responsibility to pay. The Landlords provided the three unpaid utility bills in support.

The Landlords are seeking to be compensated for the property management costs associated to re-renting the rental unit in the amount of \$1,100.00. The Landlord's Agent confirmed that this is the cost associated with advertising, conducting showings, to find a suitable occupant to re-rent the rental unit. The Landlords are also seeking to recover \$184.00 which represents the monthly cost of property management fees for the month of February 2019.

If successful, the Landlords are seeking the return of the filing fee paid to make the Application.

Analysis

Based on the uncontested 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*. 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 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.

According to Section 45 of the *Act*, A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that;

- (a) *is not earlier than one month after the date the landlord receives the notice,*
- (b) *is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*
- (c) *is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

The Residential Tenancy Policy Guideline #30 states that during the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties.

In this case, I accept that the parties entered in a fixed term tenancy which was meant to continue at least until July 31, 2019. I accept that the Tenants provided the Landlords with their notice to end tenancy effective January 31, 2019. I accept that the Landlords immediately placed an advertisement and conducted several showings in an attempt to re rent the rental unit, however, was unable to find a new suitable occupant until March 1, 2019.

I find that the Tenants were not entitled to end the fixed term tenancy early. I find that the Tenants have breached Section 45 of the *Act* which resulted in the Landlord incurring a loss of rental income in the amount of \$2,300.00. I further find that the Landlords took reasonable steps to mitigate their loss. As such, I find that the Tenants are responsible for compensating the Landlords in the amount of \$2,300.00.

The Landlord stated that she reduced the monthly rent by \$100.00 to attract more applicants to rent the rental unit. The Landlords are seeking \$500.00 which represents the \$100.00 loss of rent incurred until the end of the fixed term tenancy. In this case, I find that the Landlords were not required to reduce the monthly rent and that they did

not mitigate her loss by choosing to reduce the rent. As such, I dismiss this portion of the Landlords' claim.

The Landlords are claiming \$261.69 in relation to three outstanding utility bills as that the Tenant's failed to pay. In this case, I accept that the Tenant's were responsible for paying their own utilities during the tenancy. As such, I find that the Landlords have established an entitlement to the return of \$261.69 from the Tenants towards the unpaid utilities.

The Landlords are seeking to be compensated for the property management costs associated to re renting the rental unit in the amount of \$1,100.00. The Landlords are also seeking to recover \$184.00 which represents the monthly cost of property management fees for the month of February 2019.

According to the Residential Policy Guideline #4; 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, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

In this case, I find that the Landlords have provided insufficient evidence to demonstrate that the parties agreed to a liquidated damages clause at the start of the tenancy. As such, I find that the Landlords are not entitled to claiming for damages in the event of a breach of the tenancy agreement and dismiss the Landlords' claim for property management fees and the cost of re-renting the rental unit without leave to reapply.

Having been partially successful, I find the Landlords are entitled to recover the filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlords retain the 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 \$1,511.69, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$2,300.00
Unpaid utilities:	\$261.69
Filing fee:	\$100.00
<i>LESS</i> security deposit:	<i>-(\$1,150.00)</i>
TOTAL:	\$1,511.69

Conclusion

The Tenants breached the Act by ending their fixed term tenancy early and failing to pay their utilities. As such, the Landlords are granted a monetary order in the amount of \$1,511.69. The order should be served to the Tenants 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: May 28, 2020

Residential Tenancy Branch