



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, made on May 21, 2020 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

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

The hearing was scheduled for 1:30pm on September 24, 2020 as a teleconference hearing. Only the Landlords' Agent appeared and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 45 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' Agent and I were the only persons who had called into this teleconference.

The Landlords' Agent testified the Tenant did not provide the Landlords with their forwarding address. As such, the Landlords employed the services of Skip Tracer which located the Tenant's new address at the time of the Landlords submitting their Application. The Landlords provided the Skip Tracer report in support. The Landlords' Agent stated that the Application and documentary evidence package was served to the Tenant by email on May 21, 2020 as well as by registered mail on July 21, 2020. A copy of the Canada Post registered mail receipt and email was submitted in support. Based on the oral and written submissions of the Applicant, and in accordance with sections 71 of the *Act*, I find that the Tenant was sufficiently served in accordance with the *Act*. The Tenant did not submit any documentary evidence in response to the Application.

The Landlords' Agent was provided with a full 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to a monetary order for damage compensation or loss, pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to a monetary order for unpaid rent and utilities, pursuant to Section 67 of the *Act*?
3. Are the Landlords entitled to retaining the security deposit, pursuant to Section 38, and 72 of the *Act*?
4. Are the Landlords entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlords' Agent testified that the fixed term tenancy began on December 4, 2019 and was meant to continue until January 31, 2021. During the tenancy, the Tenant was required to pay rent in the amount of \$1,225.00 to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$597.50 which the Landlords continue to hold. The Landlords' Agent stated that the tenancy ended early on February 15, 2020.

The Landlords are seeking monetary compensation in the amount of \$612.50 in relation to unpaid rent from February 1st to 15th, 2020. The Landlords' Agent stated that the on January 15, 2020 the Landlords received notification from the Tenant that they wished to end the tenancy early. The Landlords' Agent stated that the parties agreed to end the tenancy on February 15, 2020 at which point the Landlords found a new occupant to re-rent the rental unit. The Landlords' Agent stated that the Tenant did not pay rent to the Landlords for the half month of February 2020. As such, the Landlords are seeking to be compensated for the unpaid rent.

The Landlords are claiming \$241.35 in relation to unpaid utilities. The Landlords' Agent stated that the Tenant is required to pay 20 percent of the utilities as per the tenancy agreement. The Landlords' Agent stated that he Tenant failed to pay the utility costs to

the Landlords. The Landlords provided a copy of the utility bills and a copy of the tenancy agreement in support.

The Landlords are seeking compensation in the amount of \$235.50 for the costs associated in re-renting the rental unit as a result of the Tenant ending the fixed term tenancy agreement early. The Landlords' Agent stated that the Landlords were required to employ an Agent to conduct showings as the Landlords weren't anticipating the tenancy ending early and were wanting to mitigate their loss to the best of their ability. The Landlords' Agent stated that the Landlords were able to immediately re-rent the rental unit. The Landlords provided a copy of the receipt in support.

The Landlords are claiming \$1,095.70 in relation to painting costs at the end of the tenancy. The Landlords' Agent stated that the Landlords had painted the rental unit prior to the commencement of the tenancy. The Landlords' Agent stated that the condition of the walls at the end of the tenancy was poor, which required the walls to be repainted. The Landlords provided a receipt, pictures, and a condition inspection report in support.

The Landlords are claiming \$240.00 for cleaning the rental unit. The Landlords' Agent stated that the Tenant left the rental unit dirty which required further cleaning. The Landlords provided pictures, a condition inspection report, and a receipt for cleaning in support.

The Landlords are claiming \$220.45 for the cost of cleaning the carpets at the end of the tenancy. The Landlords' Agent stated that the Tenant had a pet and that the carpets were stained and smelled of urine at the end of the tenancy. The Landlords provided pictures, a condition inspection report, and a receipt for carpet cleaning in support.

The Landlords are claiming \$180.00 for garbage removal. The Landlords' Agent stated that the Tenant left a large amount of garbage in the rental unit at the end of the tenancy. The Landlords provided pictures, a condition inspection report, and a receipt for the costs of removing and disposing of the garbage.

Lastly, the Landlords are seeking the return of \$309.75 in relation to the costs associated with employing the services of a Skip Tracer. The Landlords' Agent stated that the Tenant vacated the rental unit and did not take part in the move out condition inspection and did not provide the Landlords with their forwarding address. The Landlords' Agent stated that the Landlords were required to employ a Skip Tracer to locate the Tenant in order to file the Application for compensation.

No one appeared for the Tenant to dispute the Landlords' claims.

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*. 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.

The Landlords are seeking monetary compensation in the amount of \$612.50 in relation to unpaid rent from February 1st to 15th, 2020. Section 26 of the *Act* states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the *Act*, the regulations, or the tenancy agreement, unless the Tenant has a right under this *Act* to deduct all or a portion of the rent.

As I have no evidence that the Tenant had the right to deduct any portion of the rent, I find that the Landlords are entitled to compensation in the amount of **\$612.50** for unpaid rent.

The Landlords are claiming \$241.35 in relation to unpaid utilities. I accept that the Tenant was required to pay 20 percent of the utilities to the Landlords according to the tenancy agreement. I accept that the Tenant failed to do so. As such, I find that the Landlords are entitled to monetary compensation in the amount of **\$241.35** for unpaid utilities.

The Landlords are seeking compensation in the amount of \$235.50 for the costs associated in re-renting the rental unit as a result of the Tenant ending the fixed term tenancy agreement early. 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.*

I find that the Tenant was not entitled to end the fixed term tenancy early. I accept that the tenancy agreement contains a term which is similar to a liquidated damages clause which outlines that the Tenant is responsible for pay costs incurred by the Landlords should the Tenant break the fixed term tenancy.

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 did what was necessary to mitigate their losses and was able to re-rent the rental unit immediately. I find that the Landlords' claim is reasonable, and they have provided sufficient evidence to support the loss in the amount of \$235.50. As such, I find that the Landlords are entitled to compensation in the amount of **\$235.50**.

The Landlords are claiming \$1,095.70 in relation to painting costs at the end of the tenancy. I find that the Landlords have provided sufficient evidence of the condition of the rental unit prior to the commencement of the tenancy as opposed to at the end of the tenancy. I find that it is more likely than not that the Tenant caused damage to the

rental unit and I find that the Landlords are entitled to monetary compensation in the amount of **\$1,095.70** to repaint the rental unit at the end of the tenancy.

The Landlords are claiming \$240.00 for cleaning the rental unit, \$220.45 for the cost of cleaning the carpets, and \$180.00 for garbage removal. Section 37(2) When a tenant vacates a rental unit, the tenant must;

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) 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 find that the Landlords have provided sufficient evidence to support their claim that the rental unit was not left reasonably cleaned. I find that the Landlords are entitled to compensation in the amount of **\$640.45** for cleaning and garbage removal.

Lastly, the Landlords are seeking the return of \$309.75 in relation to the costs associated with employing the services of a Skip Tracer. In this case, I find that the Tenant has not breached the *Act* by not providing the Landlords with their forwarding address. As such, I find that the Landlords are not entitled to the recovery of the costs associated with employing a Skip Tracer to locate the Tenant.

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 security deposit in the amount of \$597.50 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 \$2,328.00, which has been calculated below;

Claim	Amount
Unpaid rent:	\$612.50
Unpaid utilities:	\$241.35
Liquidated Damages:	\$235.50
Painting:	\$1,095.70
Cleaning/Garbage Removal	\$640.45
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-(<i>\$597.50</i>)
TOTAL:	\$2,328.00

Conclusion

The Landlords have established an entitlement to monetary compensation and have been provided with a monetary order in the amount of **\$2,328.00**. 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 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: October 9, 2020

Residential Tenancy Branch