



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit pursuant to section 38; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlords attended and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlords gave evidence that the tenants were each served with the notice of hearing, evidence and amendment to the application by registered mail sent on July 8, 2020 and August 26, 2020. The landlord provided valid Canada Post tracking numbers as evidence of service. Based on the evidence I find each of the tenants are deemed served with the landlord's materials on July 13, 2020 and August 31, 2020, five days after each mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to retain the security deposit for this tenancy?

Are the landlords entitled to recover the filing fee from the tenants?

Background and Evidence

There was a previous hearing under the file number on the first page of this decision on August 7, 2020. As a result of that hearing the parties entered into a full and final settlement on the following terms.

1. The Tenants will maintain possession of the rental unit until September 1, 2020 at 1:00 PM.
2. The Tenants must pay to Landlords the sum of \$1,998.00 for July 2020 rent and \$2,998.00 for August 2020 rent.
3. The parties agreed that fulfilment of these conditions would amount to full and complete satisfaction of this dispute.

The landlords were issued a Monetary Order in the amount of \$4,996.00.

The landlord testified that the tenants vacated the rental unit on September 1, 2020 as set out in the settlement agreement.

In their present application the landlords seek a monetary award in the amount of \$9,150.00 for the following items:

Item	Amount
Rent July 2020	\$2,998.00
Rent August 2020	\$2,998.00
Loss of Rent September 2020	\$2,998.00
Small Claims Court Filing Fees	\$156.00
TOTAL	\$9,150.00

The landlords claim that the tenants did not pay the amount of \$4,996.00 as agreed to and therefore they are entitled to pursue the full amount of the unpaid rent in addition to the earlier monetary award.

The landlords also claim that they are entitled to recover rental income losses for the month of September, 2020 as this was a fixed-term tenancy ended earlier than the full term despite the fact that the parties entered into a binding agreement to end the tenancy as set out above.

The landlords claim the cost of filing the earlier Orders of the Branch with the Provincial Courts of British Columbia but provided no documentary evidence that they have filed the order with the courts.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The legal principle of *res judicata* prevents an applicant from pursuing a claim that has already been conclusively decided. In the previous hearing the parties entered into a full and final settlement of the issues of outstanding rent and the end of the tenancy. It is not open for the applicant to now make a subsequent application seeking an additional monetary award for the same issues previously settled.

I find the portion of the landlords' application seeking rent for the months of July and August, 2020 have been conclusively determined in the earlier hearing by way of the settlement between the parties. Therefore, I find I have no jurisdiction to consider this portion of the application.

I find that the terms of the settlement agreement between the parties provides that the tenancy ends on September 1, 2020. As noted by the previous arbitrator the settlement agreement is full, final and binding. It is not open for the landlords to subsequently

demand additional notice or a monetary award for loss of rental income when they have made an agreement. The landlords gave undisputed evidence that the tenants vacated the rental unit as required in the settlement agreement on September 1, 2020. I therefore find that there is no violation on the part of the tenants that gives rise to a monetary award.

I find little evidence in support of the portion of the landlord's claim for filing fees. The landlord has provided no documentary evidence to show that this amount has been incurred or has any factual basis. Accordingly, I dismiss this portion of the landlords' application.

As the application was unsuccessful the landlords are not entitled to recover their filing fees.

I note that the landlords' conduct in filing an application seeking an additional Monetary Order when one has been already issued in accordance with a settlement agreement entered by the parties to be an abuse of process and conduct worthy of censure and rebuke.

Conclusion

The landlords' application is dismissed in its entirety without leave to reapply.

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 30, 2020

Residential Tenancy Branch