



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, made on August 25, 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 9:30 AM on November 30, 2020 as a teleconference hearing. Only the Landlords' Agent J.J. appeared and provided affirmed testimony. No one appeared for the Tenants. The conference call line remained open and was monitored for 19 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 had applied for an order granting substituted service, to allow for the Landlords to serve the Application and documentary evidence to the Tenants via email. The Landlords were successful in their application for substitute service according to the the September 1, 2020 decision and were directed to serve the above-mentioned documents via email, which are deemed served three days late. The Landlords provided copies of the emails sent the to Tenants on September 14, 2020. As such, I find that the Application and documentary evidence were sufficiently served, pursuant to Section 71 of the *Act*.

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 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 tenancy began on March 1, 2018. During the tenancy, the Tenants were required to pay rent in the amount of \$1,485.00 to the Landlords on the first day of each month. The Tenants paid a security deposit in the amount of \$700.00 which the Landlords continue to hold. The Landlords' Agent stated that the tenancy ended on June 26, 2020 after the Landlords received notification from the Tenants that they had abandoned the rental unit.

The Landlords are seeking to recover \$4,030.00 in relation to loss of rent and late rent fees. The Landlords' Agent stated that the Tenants only paid \$500.00 of the required \$1,485.00 rent owed for April 2020. The Landlords' Agent stated that the Tenants failed to pay any rent to the Landlords in May and June 2020. The Landlords' Agent stated that the parties had agreed to a \$25.00 late fee charge as part of the tenancy agreement. The Landlords are claiming for the late fee for April, May, and June 2020 in the amount of \$75.00. The Landlords provided a copy of the tenancy agreement in support.

The Landlords are claiming \$7,679.33 in relation to cleaning the rental unit and repairing damage made by the Tenants to the rental unit. The Landlords' Agent stated that they received notification from the Tenants via email on June 26, 2020 that they had abandoned the rental unit to be with family. The Landlords' Agent stated that he

attended the rental unit to find that the Tenants had left a large amount of garbage and drug paraphernalia in the rental unit. The Landlords' Agent stated that the Landlord hired a junk removal company to collect and dispose of all the garbage left by the Tenants inside and outside of the rental unit in the amount of \$939.53. The Landlords provided a copy of the receipt as well as picture of the garbage in support.

The Landlords' Agent stated that the Tenants also smoked and had a dog in the smoke and pet free rental unit. The Landlords' Agent stated the house had a strong odour of smoke and was left filthy and mouldy by the Tenants. The Landlords' Agent stated that commercial cleaners were required to clean the rental unit to a state in which the Landlords could re-rent the rental unit. The Landlords are therefore claiming \$1,675.80 for cleaning the rental unit, as well as \$262.00 to clean the carpets. The Landlords' Agent stated that the Tenants had also damaged the walls throughout the rental unit. The Landlords' Agent stated that the walls and ceiling required repair and painting at the end of the tenancy at a cost of \$4,802.00. The Landlords provided pictures and receipts in support of the costs.

The Landlords are also claiming for loss of rent as the Landlords were unaware that the Tenant planned to abandon the rental unit on June 26, 2020. Furthermore, the Landlords' Agent stated that it took nearly two months to arrange for and to complete the required cleaning and repairs to the rental unit. The Landlords' Agent stated that the Landlords were able to secure a new tenancy which commenced on September 1, 2020. As such, the Landlords are seeking to recover the loss of rent for July and August 2020 in the amount of \$2,970.00.

The Landlords are claiming \$238.88 in relation to a prior incident which took place at the rental unit. The Landlords' Agent stated that there had been a flood in the rental unit sometime in November 2019. The Landlords had made arrangements with a carpet cleaning company to attend in order to remove the water from the flooring in the rental unit. The Landlords' Agent stated that they had made arrangements with the Tenants in advance to allow entry for this purpose. The Landlords' Agent stated that the carpet cleaning company had attended the rental unit on three occasions to perform the remediation work, however, the Tenants did not allow them entry. The Landlords' Agent stated that the company charged the Landlords for the time it took to attend the rental unit on each occasion in the amount of \$238.88.

Lastly, the Landlords are seeking to recover the filing fee paid to make the Application. If successful, the Landlords are also seeking to retain the Tenants' security deposit towards their claims. No one appeared for the Tenants 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 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.

The Landlords are seeking to recover \$4,030.00 in relation to loss of rent and late fees. According to Section 26 (1);

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

In this case, I accept that the Tenants only paid \$500.00 of the required \$1,485.00 rent owed for April 2020 and failed to pay any rent to the Landlords in May and June 2020. I further accept that the Tenants are required to pay a late fee in the amount of \$25.00 for

each month that rent was paid late. As such, I find that the Landlords are entitled to monetary compensation in the amount of **\$4,030.00**.

The Landlords are claiming \$7,679.33 in relation to cleaning the rental unit and repairing damage made by the Tenants to the rental unit. Section 37(2) of the Act stated that 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 accept based on the Landlords' Agent's testimony, as well as the Landlords' documentary evidence that the Tenants had left a large amount of garbage, drug paraphernalia and damage in the rental unit at the end of the tenancy. I accept that the Landlords were required to remove the garbage at a cost of **\$939.53**, hire a cleaner at a cost of **\$1,675.80** as well as a carpet cleaner in the amount of **\$262.00** to clean the carpets. I am also satisfied that the Landlords were required to repair the walls and repaint the rental unit at a cost of **\$4,802.00**.

The Landlords are also claiming for loss of rent as the Landlords were unaware that the Tenant planned to abandon the rental unit on June 26, 2020. Furthermore, the Landlords' Agent stated that it took nearly two months to arrange for and to complete the required cleaning and repairs to the rental unit. The Landlords' Agent stated that the Landlords were able to secure a new tenancy which commenced on September 1, 2020. As such, the Landlords are seeking to recover the loss of rent for July and August 2020 in the amount of \$2,970.00.

According to Section 45(1) of the Act;

A tenant may end a periodic 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, and
- (b) 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 Tenants did not provide proper notice to end tenancy to the Landlords. I further find that the Landlords provided sufficient evidence to demonstrate that the

cleaning and repairs were so extensive that it is reasonable that it took two months to secure the appropriate trades persons and to perform the work required in order to restore the rental unit to a state in which the Landlords were able to re-rent the rental unit. As such, I find that the Landlords are entitled to the **\$2,970.00** for the loss of rent for July and August 2020.

The Landlords are claiming \$238.88 in relation to a prior incident which took place at the rental unit. The Landlords' Agent stated that a carpet cleaning company had attended the rental unit on three occasions to perform the remediation work due to a flood, however, the Tenants did not allow them entry. The Landlords' Agent stated that the company charged the Landlords for the time it took to attend the rental unit on each occasion in the amount of \$238.88. In this case, I find that the Landlords are entitled to compensation in the amount of **\$238.88** as the Landlords were charged for the Tenants failure to provide entry to the cleaners who were providing remediation services to the rental unit.

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 security deposit in the amount of \$700.00 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 \$14,318.21, which has been calculated below;

Claim	Amount
Unpaid rent/late fees:	\$4,030.00
Garbage removal:	\$939.53
Cleaning:	\$1,675.80
Carpet cleaning:	\$262.00
Painting:	\$4,802.00
Loss of rental income:	\$2,970.00
Remediation Charge back:	\$238.88
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-(<i>\$700.00</i>)
TOTAL:	\$14,318.21

Conclusion

The Landlords have established an entitlement to monetary compensation and have been provided with a monetary order in the amount of **\$14,318.21**. 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 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: November 30, 2020

Residential Tenancy Branch