



Dispute Resolution Services

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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 Landlord's Application for Dispute Resolution, made on September 3, 2020 (the "Application"). The Landlord 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;
- an order to retain the Tenant's security deposit; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. The Tenant stated that she received some of the Landlord's documentary evidence on December 4, 2020. The Tenant was concerned that this evidence was served late. During the hearing, the Tenant confirmed that she has had an opportunity to review, consider, and respond to the evidence she received. No other issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

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. 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 retain the Tenant's security deposit, pursuant to Section 38 and 72 of the *Act*?
4. 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 parties testified and agreed to the following; the parties came together on July 17, 2020 and entered into a fixed term tenancy agreement which was meant to begin on August 1, 2020 until December 31, 2020. The Tenant was required to pay rent in the amount \$1,450.00 to the Landlord which was due on the first day of each month. The Tenant paid a security deposit to the Landlord in the amount of \$700.00 which the Landlord continues to hold.

The Landlord stated she received a notification from the Tenant on July 18, 2020 that she would no longer be moving into the rental unit, and provided a formal notice to end tenancy to the Landlord by email on July 20, 2020. The Landlord stated that she had turned down other potential renters when she chose the Tenant to rent the rental unit. The Landlord stated that she attempted to re-rent the rental unit by placing advertisements for rent across several social media sites, however, has been unsuccessful in finding a new occupant to rent the rental unit.

As such, the Landlord is seeking to be compensated for the loss of rent from August to December 2020 in the amount of \$7,250.00. The Tenant provided a copy of the rental listings in support. The Landlord stated that while she lives out of town, she had her roommate conduct showings on her behalf.

The Landlord stated that the Tenant would have also been required to pay a portion of the utilities in the amount of \$30.00 per month for hydro and \$50.00 per month for internet. The Landlord is claiming to recover from August to December 2020 in the amount of \$150.00 for hydro and \$250.00 for internet.

Lastly, the Landlord is claiming to recover \$300.00 for travel costs associated with travelling from her residence, to the rental unit in order to clean the rental unit for the Tenant who did not end up occupying the rental unit.

The Tenant responded by acknowledging that she did not move into the rental unit as intended. She stated that she found a more suitable residence instead. The Tenant stated that the Landlord did not mitigate her loss as her rental advertisements were limited and were not renewed frequently. The Tenant stated that she did not agree to paying any specific amount of utilities to the Landlord and feels as though she should not pay for utilities as none of them were used. Lastly, the Tenant disagrees with the Landlord's claim for travel expenses as she did not agree to a liquidated damages clause in her tenancy agreement.

Analysis

Based on the 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 Landlord 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 Landlord 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.

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. 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.

In this case, the Tenant stated that they felt justified in ending the fixed term agreement due to the fact that she found more suitable housing. In this case, I find that the Tenant was not permitted to end the fixed term tenancy early. I find that the Landlord did not agree to end the tenancy and I find that the Tenant provided insufficient evidence to demonstrate that the Landlord breached a material term of the tenancy agreement.

The Landlord is claiming \$7,250.00 in relation for the loss of rent from August to December 2020 which is the length of the fixed term agreement as the Landlord was unable to re-rent the rental unit. In this case, I find that the Landlord provided some evidence that she listed the rental unit for rent, however, I find that that the Landlord provided insufficient evidence to demonstrate the number of showings that were conducted by her roommate on her behalf. I find that the Landlord provided insufficient evidence to demonstrate that the rental advertisements were renewed each month from August to December 2020.

While I find that the Tenant breached the *Act* by ending the fixed term tenancy prior to moving into the rental unit, I find that the Landlord provided insufficient evidence to demonstrate that she mitigated her loss rent over 5 months, however, find that she is entitled to some compensation. As such, I find that the Landlord is entitled to monetary compensation in the amount of **\$2,900.00** which is equivalent to two months of rent.

The Landlord is also claiming \$150.00 for hydro and \$250.00 for internet as the Tenant would have been required to pay these utilities during the tenancy. In this case, I find that the tenancy agreement provided by the parties did not specify the amount of utilities owed to the Landlord by the Tenant. I find that the Landlord provided insufficient evidence to support the cost of the utilities she is claiming for. As such, I dismiss the Landlord's claim for utilities without leave to reapply.

The Landlord is also claiming \$300.00 for compensation relating to travel expenses associated with travelling from her residence to the rental unit to clean it for the Tenant who did not move in. I find that the Landlord would have had to travel to the rental unit for cleaning regardless if the Tenant occupied the rental unit or not. I find that this claim relates to liquidated damages which is defined as liquidated damages in 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.

I find that the tenancy agreement provided by the parties does not contain a liquidated damages clause. In light of the above, I dismiss the Landlord's claim to recover travel costs without leave to reapply.

Having been partially successful, I find the Landlord is 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 Landlord retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$2,300.00, which has been calculated as follows:

Claim	Amount
Loss of rent	\$2,900.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	<i>-\$700.00</i>
TOTAL:	\$2,300.00

Conclusion

The Tenant has breached the Act by ending the fixed term tenancy early. The Landlord is granted a monetary order in the amount of \$2,300.00. 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 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: December 17, 2020

Residential Tenancy Branch