



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEST PROPERTY MANAGEMENT AND REAL
ESTATE SERVICE and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on October 14, 2020, wherein the Landlord sought monetary compensation from the Tenants in the amount of \$788.31 including loss of rental income, liquidated damages, and recovery of the filing fee.

The hearing was scheduled for 1:30 p.m. on February 8, 2021. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. Should the Landlord be authorized to retain the Tenants' security and pet damage deposit towards any amount awarded to the Landlord?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Property Manager testified as follows. He confirmed that this month to month tenancy began June 15, 2020. Rent was payable in the amount of \$1,100.00 on the first of every month. The Tenant paid a \$550.00 security deposit and a \$550.00 pet damage deposit. A copy of the residential tenancy agreement was provided in evidence and which supported this testimony.

The Property Manager testified that the Tenants gave notice to end their tenancy by email or text on September 13, 2020. They moved on September 30, 2020 without giving a full month's notice to end their tenancy.

The Property Manager testified that they re-rented the unit as of October 13, 2020.

In the hearing before me the Landlord sought \$688.31 including \$425.81 as the prorated amount for rent for October 1-12, 2020, and recovery of a \$250.00 "placement fee" which the Property Manager confirmed was liquidated damages pursuant to the tenancy agreement.

In response to the Landlord's claim, the Tenant, K.B., testified as follows. She confirmed that their formal notice to end tenancy was provided on September 13, 2020. She stated that they had no choice but to move out as the rental unit was completely uninhabitable due to the actions of the renters upstairs. She further testified that they informed the Landlord repeatedly about concerns they had with these other renters and the Landlord failed to take steps to address this. In support the Tenants provided copies of electronic communication with the Landlord which was sent as early as September 9, 2020.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on

the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

The Landlord seeks loss of rent for 12 days in October 2020 on the basis the Tenants failed to give proper notice to end their tenancy.

A residential tenancy may only be ended in accordance with the *Residential Tenancy Act*. A tenant may end a tenancy provided that the notice complies with sections 45 and 52 of the *Act*, which provide as follows:

Tenant's notice

- 45** (1) 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.

(2) 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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

The Tenants argue that they had to move from the rental unit as it became uninhabitable due to the upstairs tenant. In support they provided copies of text messages they sent to the Landlord beginning on September 9, 2020, in which they set out their concerns.

A tenant who believes their tenancy has been devalued, or their right to quiet enjoyment has been breached, must still end their tenancy in accordance with the *Act*. Similarly, should a tenant believe the landlord has breached a material term of the tenancy, they must provide the landlord a *reasonable period of time* to correct the situation as set out in section 45(3) of the *Act*. I am not satisfied the Tenants have proven the Landlord breached a material term, nor did they give the Landlord a reasonable opportunity to

correct the alleged breach. I therefore find the Tenants were obligated to give one month' notices pursuant to section 45(1)(a) of the *Act*.

The parties agreed the Tenants did not give one month's notice to end their tenancy; rather they gave notice to end their tenancy on September 13, 2020 and moved out on September 30, 2020. Pursuant to section 45(2)(a), the effective date of their notice is October 31, 2020. As such, they are obligated to pay rent until that date.

Fortunately, the Landlord was able to mitigate their losses and re-rent the unit as of October 13, 2020. I find the Landlord is entitled to recover the loss of rent for 12 days in October in the amount of **\$425.81**.

The Landlord also seeks compensation for a \$250.00 "placement fee". During the hearing, the Property Manager stated that this sum was payable pursuant to the liquidated damages clause in the agreement. While the Addendum to the tenancy agreement provided for the payment of liquidated damages, those damages are only payable pursuant to a *fixed term tenancy*. This tenancy was on a month to month basis such that paragraph 1 of the Addendum is not applicable. For clarity I reproduce that clause as follows:

1. **LIQUIDATED DAMAGES** – If the tenant breaches a material term of this Agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this agreement and end the tenancy by vacating and does not vacate before the end of any fixed term, the tenant will pay to the landlord the sum of **\$1,100.00** as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the landlord from claiming future rental revenue losses that will remain unliquidated.

I therefore dismiss the Landlord's claim for compensation for the "placement fee" of \$250.00.

As the Landlord has been partially substantially successful in this Application, I grant them recovery of one half of the \$100.00 filing fee.

Conclusion

The Landlord is entitled to monetary compensation in the amount of **\$475.81** comprised of \$425.81 in loss of rent for the October 1-12, 2020 time period, and \$50.00 for one half of the filing fee.

Pursuant to sections 38 and 72 of the *Act*, I authorize the Landlord to retain \$475.81 from the Tenants' security and pet damage deposit. The Tenants are entitled to the balance of \$624.19. In furtherance of this, I grant the Tenants a Monetary Order in the amount of **\$624.19**. Should the Landlord not pay, the Tenants must serve the Order on the Landlord and may file and enforce it in the B.C. Provincial Court (Small Claims Division).

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: March 3, 2021

Residential Tenancy Branch