



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, made on November 10, 2020 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

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

The Landlords and the Tenants attended the hearing at the appointed date and time. The Landlords testified that they served the Application and documentary evidence to the Tenants via Canada Post registered mail on November 20, 2020. The Landlords submitted the registered mail receipts in support. The Tenants stated that they did not receive the mailings. The Landlords stated that they also served their Application and documentary evidence to the Tenants in person on February 11, 2021. The Tenants confirmed receipt. As such, I find that the above-mentioned documents were sufficiently served pursuant to Sections 88, 89, and 90 of the *Act*.

The Tenants stated that they served the Landlords with their documentary evidence via Canada Post registered mail on February 23, 2021. The Landlords stated that they have not yet received the package. Based on the oral and written submissions of the Tenants, and in accordance with sections 89 and 90 of the *Act*, I find that the Landlords are deemed to have been served with the Tenants' documentary evidence on February 28, 2021, the fifth day after their registered mailings.

According to the Residential Tenancy Branch Rules of Procedure 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy

Branch **not less than seven days** before the hearing. As the Landlords had not yet received the Tenants' evidence, and are deemed to have been served only one day prior to the hearing, I find that the Tenants did not sufficiently serve the Landlords with their documentary evidence, therefore, the Tenants' documentary evidence will not be considered.

The parties were 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 parties testified and agreed to the following; the tenancy began on July 1, 2020. During the tenancy, the Tenants were required to pay rent in the amount of \$1,950.00 to the Landlords on the last day of each month. The Tenants paid a security deposit in the amount of \$975.00 and a pet damage deposit in the amount of \$500.00, totaling \$1,475.00 in deposits currently being held by the Landlords. The parties also agreed that the tenancy ended on November 5, 2020.

The Landlords are seeking to recover a per diem amount of rent in the amount of \$780.00. The Landlords stated that the Tenants provided the Landlords with their notice to end tenancy on October 9, 2020 indicating that the Tenants would vacate the rental unit on November 12, 2020. The Landlords stated that the Tenants did not pay rent for November 2020 before they vacated the rental unit on November 5, 2020. As such, the Landlords are seeking to recover the loss of rent from November 1 to 12, 2020 in the amount of \$780.00

The Tenants stated that due to the conflict between the parties during the tenancy, they felt as though they had to vacate the rental unit early. The Tenants stated that they found new accommodations on October 15, 2020 and were unable to pay rent at both places.

The Landlords are claiming \$17,931.31 in relation to a restoration estimate they obtained at the end of the tenancy to restore the damage caused to the rental property by the Tenants. The Landlords stated that the Tenants spilled motor oil all over their back-yard patio which required emergency clean up. The Landlords stated that the Tenants removed and damaged a gate, fence, as well as a metal post. The Landlords provided a copy of the estimate and pictures in support.

The Landlords stated that due to the cold weather, the restoration company has been unable to complete much of the work that is listed on the estimate. The Landlords stated that the fence is the only item that has been repaired. The Landlords stated that they plan to claim these items through their insurance. The Landlords were unsure as to what their insurance deductible is but estimated between \$500.00 to \$1,000.00. The Landlords stated that they have not yet paid the deductible or any amount showing on the restoration estimate.

The Tenants denied that they spilled any oil on the rental property. The Tenants acknowledged that they removed the fence, gate and post, however, denied causing damage to these items. The Tenants stated that they offered to re-install these items at the end of the tenancy, however, were notified by the Landlords not to bother.

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*. 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.

The Landlords are seeking to recover \$780.00 in rent from November 1 to 12, 2020 as the Tenants gave their notice to end tenancy on October 9, 2020 indicating that the Tenants would vacate the rental unit on November 12, 2020. I accept that the parties agreed that the Tenants did not pay rent for November 2020 before they vacated the rental unit on November 5, 2020.

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

According to Section 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.

In this case, I find that the Tenants' notice to end tenancy would have taken effect the day before the day in the month that rent is payable, or October 30, 2020. As such, I find that the Tenants would have been required to pay rent for the month of November 2020 to the Landlords. As the Landlords are only seeking a per diem amount of rent up to November 12, 2020, I find that they have established an entitlement to **\$780.00**.

The Landlords are claiming \$17,931.31 in relation to damage caused by the Tenants to the rental property at the end of the tenancy. During the hearing, the Landlords stated that much of the proposed work has not yet been completed. Furthermore, the Landlords stated that they are claiming these costs through their insurance. During the hearing, the Landlords stated that they have not yet had to pay their insurance deductible and were uncertain as to how much their deductible would be. I find that the Landlords have provided insufficient evidence to verify the value of the loss or damage. As such, I dismiss the Landlords claim for damages without leave to reapply.

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 \$880.00 from the \$1,475.00 deposits held in satisfaction of the claim ($\$1,475.00 - \$880.00 = \$595.00$)

Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$595.00, which represents the remaining balance of their security and pet deposits less the previously mentioned deductions.

Conclusion

The Landlords have established an entitlement to monetary compensation in the amount of \$880.00 which has been deducted from the Tenants' security and pet deposits. The Tenants are granted a monetary order in the amount of **\$595.00** which represents the remaining balance of the Tenants' deposits. The order should be served to the Landlords 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: March 05, 2021

Residential Tenancy Branch