



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL MNDCL FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for a monetary order in the amount of \$12,325.59 for unpaid rent or utilities, for compensation for damage or loss under the Act, regulation or tenancy agreement, and recover the cost of the filing fee.

Two agents for the landlord, JL and VS (agents) called into the hearing at the correct time of 1:30 p.m. Pacific Standard Time (PST). The tenant called into the hearing 12 minutes late at 1:42 p.m. PST. As both parties attended the teleconference hearing, all parties were affirmed and given a chance to provide testimony and present evidence. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Based on the testimony provided prior to the tenant joining the hearing, I am satisfied that the tenant was sufficiently served in accordance with the Act. The tenant provided a written forwarding address on June 8, 2020, which the tenant admitted was incorrect at the hearing. I find that the incorrect address is the responsibility of the tenant and not the landlord and service was affected to the address provided by the tenant in keeping with the Act. Therefore, I am satisfied that the tenant was deemed served as per section 90 of the Act on December 29, 2020, as the registered mail package was mailed on December 24, 2020. Section 90 of the Act states that documents sent by registered mail are deemed served 5 days after they are mailed. The registered mail tracking number has been included on the style of cause for ease of reference.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the agents confirmed the respective email addresses of the parties at the outset of the hearing. The decision will be emailed to both parties. Any monetary order will be emailed to the landlord only for service on the tenant has necessary.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of a tenancy agreement was submitted in evidence. The tenancy began on June 17, 2019 and was for a fixed-term expiring December 17, 2019. On October 25, 2019; however, the tenant signed an extension to the fixed-term extending the fixed-term portion of the tenancy until September 15, 2020, which was initialled by both parties and submitted in evidence for my consideration.

According to the agents, the tenant vacated the rental unit on June 8, 2020 without notice and without consent of the landlord. As a result, the landlord's monetary claim is for the following, which I find contained an addition error, so is actually \$12,225.59 before deducting the tenant's security deposit as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. April 1 to August 14, 2020 unpaid rent and loss of rent	\$10,777.50
2. Rent differential	\$400.00
3. Tenant placement fee/liquidated damages	\$409.50
4. Legal fees	\$525.00
5. Filing fee	\$100.00
6. Registered mail costs	\$13.59
SUBTOTAL	\$12,225.59
<i>(Less security deposit signed over by tenant)</i>	<i>-(1,197.50)</i>
TOTAL	\$11,028.09

Given the above, I find the landlord's actual monetary claim, before deducting the security deposit from the tenant, is \$12,225.59.

Regarding item 1, the landlord is seeking \$10,777.50 in unpaid rent and loss of rent as follows:

- A. Unpaid rent for April 2020 of \$2,395.00
- B. Unpaid rent for May 2020 of \$2,395.00
- C. Unpaid rent for June 2020 of \$2,395.00
- D. Loss of rent for July 2020 of \$2,395.00
- E. Loss of rent for August 1-14, 2020 of \$1,197.50

The tenant stated that they could not recall if rent was paid for April or May of 2020. The agents testified that the above amounts indicate what the tenant owes for breaching the fixed-term tenancy and vacating early and without notice.

Regarding item 2, the landlord has claimed \$400.00 for the rent loss differential for the August 15-31, 2020 and September 1-15, 2020, inclusive. The agents confirmed that they began to advertise the rental unit once the tenant vacated the rental unit and were able to secure a new tenant after reducing the monthly rent to \$1,995.00 per month. As a result, the landlord is seeking the loss of rent differential as the new tenants moved in August 15, 2020 and paid \$997.50 for August 15-31, 2020 pro-rated rent as the new rent amount was \$1,995.00, leaving a rent differential of \$200.00 for August 15-31, 2020. In addition, the tenants paid \$1,995.00 for the entire month of September, which leaves September 1-15, 2020 amount being \$997.50, which the agents stated left a rent

differential owing of \$200.00 for September 1-15, 2020 as the fixed-term was set to expire on September 15, 2020.

Regarding item 3, the landlord has claimed \$409.50 for the cost to re-rent the rental unit, which the agents clarified would be liquidated damages, even though the tenancy agreement listed the liquidated damages at \$2,395.00.

Regarding item 4, the landlord has claimed \$525.00 for the cost of the agents to represent them at the hearing, which was dismissed during the hearing due to there being no remedy under the Act. I will address this item further in my analysis below.

Regarding item 5, the filing fee will be addressed later in this decision.

Regarding item 6, the landlord has claimed \$13.59 in registered mail costs related to filing this application, which was dismissed during the hearing as there is no remedy under the Act for registered mail costs. I will address this item further in my analysis below.

Regarding item 7, this item is actually a credit of \$1,197.50 and related to the tenant's security deposit. According to the outgoing Condition Inspection Report (CIR) the tenant signed the outgoing CIR authorizing the landlord to retain their entire security deposit of \$1,197.50. This amount I will account for in my analysis below.

Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

Test for damages or loss

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 in sections 7 and 67 of the Act. Accordingly, 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 the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

Item 1 – As the tenant could not recall if they paid April and May 2020 rent and the agents were certain that the tenant had not paid the rental as described above, I prefer the evidence of the agents over that of the tenant. Therefore, I find the landlord has met the burden of proof and that the tenant breached section 45(2) of the Act, which applies and states:

Tenant's notice

45(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.

[emphasis added]

Based on the above, I find the tenant was not entitled to end the fixed-term early because there was no evidence of a signed mutual agreement between the parties to end the tenancy earlier than September 15, 2020. Therefore, I find the landlord has met the burden of proof and I grant the landlord **\$10,777.50** as claimed for this item as described above.

Item 2 - The landlord has claimed \$400.00 for the rent loss differential for the August 15-31, 2020 and September 1-15, 2020, inclusive. I accept the agents' testimony which I find supports that the landlord complied with section 7(2) of the Act. Section 7(2) of the Act states the following:

Liability for not complying with this Act or a tenancy agreement

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Based on the above, I find the landlord security a new tenant for less rent of \$1,995.00 per month complied with section 7(2) of the Act and part four of the test for damages and loss, which was to minimize the loss. Therefore, I agree with the calculations as set out by the agents during the hearing and I grant the landlord **\$400.00** for the rent differential owed by the tenant for August 15, 2020 to September 15, 2020.

Item 3 - The landlord has claimed \$409.50 for the cost to re-rent the rental unit, which I agree with the agents would be considered liquidated damages. As liquidated damages under RTB Policy Guideline 4 – Liquidated Damages states in part:

...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 as a result and will be unenforceable...**

[emphasis added]

Based on the above, while I find the original amount of \$2,395.00 was not a genuine pre-estimate of the loss, I do find the reduced amount of \$409.50 to be reasonable and genuine. Therefore, as I find the tenant breached the fixed-term tenancy by vacating early, I grant the landlord **\$409.50** as claimed for this item as liquidated damages and I dismiss any amount higher related to liquidated damages, due to insufficient evidence.

Item 4 - The landlord has claimed \$525.00 for the cost of the agents to represent them at the hearing, which was dismissed during the hearing due to there being no remedy under the Act. I find that the landlord made the discretionary decision to hire agents to represent them and that there was no legal requirement for the landlord to do so. As a result, I find the landlord has failed to meet the burden of proof as the landlord's discretionary decision to have agents has no remedy under the Act in terms of recoverable costs.

Item 5 - As the landlord's application had merit, I grant the landlord **\$100.00** for the recovery of the cost of the filing fee pursuant to section 72 of the Act.

Item 6 - The landlord has claimed \$13.59 in registered mail costs related to filing this application. This item was dismissed during the hearing as there is no remedy under the Act for registered mail costs related to the application for dispute resolution. Accordingly, this item is dismissed without leave to reapply.

Item 7 – As this item was a credit of \$1,197.50, I authorize the landlord to retain the tenant's security deposit of \$1,197.50 as the tenant surrendered the full deposit by signing the outgoing CIR indicating such. Accordingly, this amount will be accounted for below.

ITEM DESCRIPTION	AMOUNT GRANTED
1. April 1 to August 14, 2020 unpaid rent and loss of rent	\$10,777.50
2. Rent differential	\$400.00
3. Tenant placement fee/liquidated damages	\$409.50
4. Legal fees	Dismissed
5. Filing fee	\$100.00
6. Registered mail costs	Dismissed
SUBTOTAL	\$11,687.00
<i>(Less security deposit signed over by tenant)</i>	<i>-(1,197.50)</i>
TOTAL	\$10,489.50

Based on the above, I find the landlord has established a total monetary claim of **\$11,687.00** and pursuant to sections 38 and 67 of the Act, I grant the landlord authorization to retain the tenant's security deposit of \$1,197.50 in partial satisfaction of the landlord's monetary claim. Pursuant to section 67 of the Act, I grant the landlord a monetary order for the pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of **\$10,489.50**.

Conclusion

The landlord's claim is mostly successful.

The landlord has established a total monetary claim of \$11,687.00 which has been offset with the tenant's security deposit of \$1,197.50, which has accrued \$0.00 in interest, in partial satisfaction of the landlord's monetary claim pursuant to sections 38 and 67 of the Act.

The landlord has been granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of \$10,489.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The tenant is reminded the they may be held liable for enforcement costs related to the monetary order.

This decision will be emailed to both parties. The monetary order will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 28, 2021

Residential Tenancy Branch