



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, made on December 22, 2020 (the "Application"). The Landlords 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 security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on April 29, 2021 as a teleconference hearing. Only the Landlord K.H. appeared and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 29 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 Landlord and I were the only persons who had called into this teleconference.

Preliminary Matters

The Landlord had applied for an Order granting substituted service as the Tenant had not provided the Landlords with their forwarding address. In the January 7, 2021 Substituted Service Decision, it was found that:

"The landlord is granted an order for substituted service. The landlord may serve the tenant the Application for Dispute Resolution, with supporting documents and written evidence, along with a copy of this substituted service decision, to the tenant's e-mail address as set out above. I order that documents served in this manner have been sufficiently served to the tenant for the purposes of the Act, three days after the date that the e-mail is sent by the landlord to the tenant."

During the hearing, the Landlord stated that she served the Tenant with the Notice of Hearing package, Substituted Service Decision, and documentary evidence via email

on January 12, 2021. The Landlord provided a copy of screen shots to demonstrate the email service and subsequent response from the Tenant confirming receipt in support. As such, I find based on Section 71 and 90 the Tenant is deemed to have been served with the above-mentioned documents on January 15, 2021. The Tenant did not provide any documentary evidence in response to the Application.

The Landlord 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 Landlord testified that the fixed term tenancy began on October 15, 2020 and was meant to continue until March 15, 2021. During the tenancy, the Tenant was required to pay rent in the amount of \$1,350.00 to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$675.00 which the Landlords continue to hold. The Landlord stated that the tenancy ended early on December 1, 2020. The Landlords provided a copy of the Tenancy agreement in support.

The Landlords are claiming \$4,450.00 in relation to loss of rent from December 2020 to March 15, 2021. The Landlord stated that the Tenant abandoned the rental unit on December 1, 2020 without providing any notice to the Landlords. The Landlord stated that the parties had entered into a fixed term tenancy until March 15, 2021. The Landlord stated that she made every effort to re-rent the rental unit, however, has been unable to find a suitable occupant. The Landlord stated that they have since decided to convert the rental unit to a short-term vacation rental.

The Landlords are seeking monetary compensation in the amount \$400.00 to dispose of items left behind in the rental unit by the Tenant. The Landlord stated that there was a full bedroom set left behind which needed to be disposed of. Furthermore, there were garbage bags left all over the unit. The Landlord provided pictures of these items in support.

The Landlord is claiming \$220.00 for cleaning. The Landlord stated that the Tenant vacated the rental unit and did not clean anything before they left. The Landlord provided a statement from the cleaner, pictures of the rental unit, as well as an invoice in support.

If successful, the Landlords are seeking to retain the Tenant's security deposit towards their monetary claim. The Landlords are also seeking the return of the filing fee. No one appeared for the Tenant 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 Tenant. 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 Landlord did what was reasonable to minimize the damage or losses that were incurred.

The Landlords are seeking compensation in the amount of \$4,450.00 for loss of rent from December 2020 to March 15, 2021 as a result of the Tenant ending the fixed term tenancy agreement early. 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.*

I find that the Tenant was not entitled to end the fixed term tenancy early. I accept that the Landlords were unable to re-rent the rental unit for December 2020 and January 2021 in the absence of any notice to end tenancy by the Tenant. As such, I find that they are entitled to monetary compensation in the amount of $(\$1,350.00 \times 2 = \textbf{\$2,700.00})$. As for the loss of rent for the remaining months of February and March 2021, I find that the Landlords have provided insufficient evidence to demonstrate their efforts to mitigate their loss in finding a new occupant to re-rent the rental unit. I accept that they have since decided not to re-rent the rental unit.

The Landlords are claiming \$400.00 for removing items from the rental unit which had been abandoned by the Tenant. Furthermore, the Landlords are claiming \$220.00 for cleaning the rental unit at the end of the tenancy. Section 37(2) 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 find that the Landlords have provided sufficient evidence to support their claim that the rental unit was not left reasonably cleaned and that the Tenant abandoned some of their possessions at the end of the tenancy, which the Landlords were required to dispose of. I find that the Landlords are entitled to compensation in the amount of **\$620.00** for cleaning and garbage removal.

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 the security deposit in the amount of \$675.00 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 \$2,785.00, which has been calculated below;

Claim	Amount
Loss of Rent:	\$2,700.00
Cleaning/Garbage Removal	\$660.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-(<i>\$675.00</i>)
TOTAL:	\$2,785.00

Conclusion

The Landlords have established an entitlement to monetary compensation and have been provided with a monetary order in the amount of **\$2,785.00**. 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 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: April 30, 2021

Residential Tenancy Branch