



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on January 13, 2021 (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 security deposit; and
- an order granting recovery of the filing fee.

The Landlord and the Tenants attended the hearing at the appointed date and time. At the start of the hearing, the Tenant confirmed receipt of the Landlord's Application and documentary evidence. As such, I find that the above-mentioned documents were sufficiently served pursuant to Section 71 of the Act.

The Landlord stated that she received the Tenants' documentary evidence two days prior to the hearing. The Tenants stated that they were not aware of the time limits relating to service of evidence.

Preliminary Matters

According to the Residential Tenancy Branch Rules of Procedure 3.15 Respondent's evidence provided in single package:

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete

package. The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 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 Tenants served the Landlord with their documentary evidence only two days prior to the hearing, I find that the Tenants' documentary evidence will not be considered as it was not served in accordance with the Rules of Procedure.

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. Is the Landlord entitled to a monetary order for damage compensation or loss, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to retaining the security deposit, pursuant to Section 38, and 72 of the *Act*?
4. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified that the fixed term tenancy began on July 31, 2020 and was meant to continue until September 30, 2021. During the tenancy, the Tenants were required to pay rent in the amount of \$2,950.00 to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$1,475.00 which the Landlord continues to hold. The Landlord provided a copy of the tenancy agreement in support.

The Landlord is claiming \$2,875.00 for the loss of rent for January 2021. The parties testified and agreed that the Tenants provided their notice to end tenancy early with an effective vacancy date of December 31, 2020. The Landlord stated that she lives out of

the Country, therefore, she employed a property management company to re-rent the rental unit. The parties confirmed that the rental company posted an advertisement twelve days after the Tenants gave their notice to end tenancy. The Landlord stated that within 18 days the property manager found a new occupant for the rental unit who was able to move into the rental unit for February 2021.

The Landlord stated that the Tenants were not entitled to end the tenancy early, which resulted in the Landlord suffering a loss of rent for January 2021. The Tenants stated that the Landlord did not mitigate their loss as it took twelve days to advertise the rental unit.

The Landlord is also claiming for liquidated damages in the amount of \$1,572.33 which was the cost associated with re-renting the rental unit. The Landlord stated that the property manager charged half a month of rent to fill the rental unit, as well as there were some expenses relating to conducting credit checks. The Landlord provided an invoice in support.

The Tenants stated that the Landlord could have re-rented the rental unit without the use of a property manager. The Tenants stated that the Landlord had previously advertised the rental unit without representation.

The Landlord is claiming \$440.00 as the property manager suggested that the Landlord reduce the rent by \$55.00 each month in order to attract more interest in the rental unit. The Landlord stated that the new occupant is now required to pay rent in the amount of \$2,895.00 instead of the \$2,950.00 which the Tenants had been paying. As such, the Landlord is seeking to recover the loss of rent for the remaining months until the end of the fixed term. The Tenants stated that the Landlord made no attempts at re-renting the rental unit for the same amount of rent. As such, the Landlord did not mitigate their loss.

The Landlord is claiming \$241.50 for deep cleaning, as well as \$280.00 for carpet cleaning. The Landlord stated that the property manager determined that the rental unit could use further cleaning at the end of the tenancy. The Tenants stated that they left the rental unit in better condition at the end of the tenancy than when they moved in. The Tenants stated that they did a good job cleaning but did not employ a professional cleaner. The Landlord provided a copy of the condition inspection report.

The Landlord is claiming \$162.61 in relation to changing the locks at the end of the tenancy. The Landlord stated that this was a standard procedure to change the locks in case the Tenants kept a key to the rental unit.

The Tenants stated and the Landlord confirmed that the Tenants returned the same keys at the end of the tenancy that they were provided with at the start of the tenancy.

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 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 Landlord is claiming \$2,875.00 for the loss of rent for January 2021. I accept that the parties agreed that the Tenants ended the fixed term tenancy early on December 30, 2020. The Tenants stated that the Landlord took twelve days to re-list the rental unit therefore did not mitigate her loss of rent for January 2021.

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 Tenants were not entitled to end the fixed term tenancy early. I accept that after the Landlord received the Tenant's notice, she contacted a property management company to handle to management of the rental unit as she was out of the Country. I find that it is reasonable for this to have taken twelve days. As such, I find that the Landlord is entitled to compensation in the amount of **\$2,875.00** for loss of rent as a result of the Tenants ending their fixed term tenancy early.

The Landlord is also claiming for liquidated damages in the amount of \$1,572.33 which was the cost associated with re-renting the rental unit. According to 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 between the parties contains a liquidated damages clause. I find that the parties signed the fixed term tenancy agreement agreeing to the terms and conditions of the agreement. I find that the Landlord is entitled to employ the services of a property management company to act on her behalf. I find that the Landlord provided sufficient evidence to support the cost of re-renting the rental unit. As such, I find that the Landlord is entitled to compensation in the amount of **\$1,572.33**.

The Landlord is claiming \$440.00 as the property manager suggested that the Landlord reduce the rent by \$55.00 each month in order to attract more interest in the rental unit. In this case, I find that the Landlord chose to reduce the rent and therefore, I find that the Landlord did not mitigate their loss by agreeing the rent the rental unit for lower rent. As such, I dismiss this claim without leave to reapply.

The Landlord is claiming \$241.50 for deep cleaning as well as \$280.00 for carpet cleaning. I find that the Landlord provided insufficient evidence to demonstrate that the rental unit required further cleaning. I find that the condition inspection report provided

by the Landlord makes no mention as to the rental unit being dirty at the end of the tenancy. As such, I dismiss these claims without leave to reapply.

The Landlord is claiming \$162.61 in relation to changing the locks at the end of the tenancy. The Landlord stated that this was a standard procedure to change the locks. According to the Residential Tenancy Policy Guideline 1: If the tenant requests that the locks be changed at the beginning of a new tenancy, the landlord is responsible for re-keying or otherwise changing the locks so that the keys issued to previous tenants do not give access to the residential premises. The landlord is required to pay for any costs associated with changing the locks in this circumstance. The landlord may refuse to change the locks if the landlord had already done so after the previous tenant vacated the rental premises.

In this case, I find that it is the Landlord's responsibility to change the locks if the new occupant requests that this be done. I find that the Landlord provided insufficient evidence to demonstrate that the Tenants should be responsible for this cost. As such, I dismiss this claim 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 in the amount of \$1,475.00 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 \$3,072.33, which has been calculated below;

Claim	Amount
Loss of Rent:	\$2,875.00
Liquidated Damages:	\$1,572.33
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-(<i>\$1,475.00</i>)
TOTAL:	\$3,072.33

Conclusion

The Landlord has established an entitlement to monetary compensation and has been provided with a monetary order in the amount of **\$3,072.33**. 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: May 17, 2021

Residential Tenancy Branch