



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 March 26, 2021 (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 Landlord, the Tenant C.R., and the Tenant's Advocate J.N. attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As such, I find that the above noted documents were sufficiently served pursuant to Section 71 of the *Act*.

Preliminary Matters

At the start of the hearing, the parties agreed that Tenant C.R. moved out of the rental unit in November 2020, while Tenant V.L. remained in the rental unit until March 22, 2021. As such, Tenant C.R. felt as though she should not be responsible for any unpaid rent during the time she did not occupy the rental unit. The parties agreed that both Tenant V.L. and C.R. are listed on the tenancy agreement.

According to the Residential Tenancy Policy Guideline 13 Rights and Responsibilities of Co-tenants; Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. "Jointly and severally" means that all co-tenants are responsible, both

as one group and as individuals, for complying with the terms of the tenancy agreement. As there is no evidence before me that the parties entered into a new tenancy agreement, or that the tenancy agreement was amended by way of mutual agreement of the parties, to remove Tenant C.R. from the tenancy agreement after C.R. vacated, I find that both Tenants were jointly and severally responsible for meeting the terms of the agreement until the end of the tenancy on March 22, 2021.

The Landlords are seeking monetary compensation for unpaid rent, and for damage and loss. The Landlords provided the full particulars with respect to the unpaid rent, however, the Landlords did not provide a monetary worksheet containing the particulars of their claims for damage or loss. At the start of the hearing, the Tenant confirmed that it was unclear to her as to what the Landlords were claiming for.

According to Section 59 (2) An application for dispute resolution must;

(a) be in the applicable approved form,
(b) **include full particulars of the dispute that is to be the subject of the dispute resolution proceedings**, and

(c) be accompanied by the fee prescribed in the regulations.

(3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

(5) The director may refuse to accept an application for dispute resolution if

(a) in the director's opinion, the application does not disclose a dispute that may be determined under this Part,

(b) the applicant owes outstanding fees or administrative penalty amounts under this Act to the government, or

(c) the application does not comply with subsection (2).

I find that proceeding with the Landlords' monetary claim for damage or loss at this hearing would be prejudicial to the Tenants, as the absence of particulars that set out how the Landlords arrived at the amount of \$10,500.00 makes it difficult, if not impossible, for the Tenants to adequately prepare a response to the Landlords' claims. The Landlords failed to specify a detailed breakdown of their monetary claim including the amount of each item and what each item being claimed represents in the "Details of Dispute" section of the Application.

For these reasons, the Landlords' claims for damage or loss are dismissed with leave to reapply. The Landlords are reminded to provide a detailed breakdown of their monetary

claim and are encouraged to use the Monetary Worksheet available at www.rto.gov.bc.ca when submitting a monetary claim. The Landlords may include any additional pages to set out the details of his dispute in their application, as required.

The hearing continued based on the Landlords' monetary claim for unpaid rent as this was made clear in the Application as to which months and the monetary amount of rent being sought by the Landlords.

Issues to be Decided

1. Are the Landlords entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to retaining the security deposit, pursuant to Section 38, and 72 of the *Act*?
3. 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 that the tenancy began on March 15, 2020. During the tenancy, the Tenants were required to pay rent in the amount of \$2,250.00 to the Landlords which was due on the first day of each month. The Landlord stated that the Tenants paid a security deposit in the amount of \$1,125.00 which he still holds. The Tenant stated that they paid a security deposit in the amount of \$1,125.00 and an additional amount of \$1,125.00 which was meant to cover the cost of a monthly subscription security system. The Tenant stated that the additional amount should be considered a security deposit as well. The parties agreed that the Tenant C.R. moved out of the rental unit at the end of November 2020, while Tenant V.L. remained in the rental unit until March 22, 2021. The Landlord provided a copy of the tenancy agreement in support.

The Landlord stated that the Tenants were required to pay rent in the amount of \$2,250.00 on the first day of each month. The Landlord stated that he was provided with post dated cheques by the Tenants. The Landlord stated that the January, February, and March rent cheques were returned as NSF. As such, the Landlords are claiming for the loss of rent from January to March 2021 in the amount of \$6,750.00.

The Tenant responded and stated that she was unaware that the rent was not being paid as she had vacated the rental unit in November 2020 and that it would have been the Tenant V.L.'s responsibility to pay the rent moving forward.

If successful, the Landlord is seeking to recover the filing fee and to retain the Tenants' security deposit.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

With respect to the discrepancy relating to the security deposit, I find that the tenancy agreement between the parties indicates that the Tenants paid a security deposit in the amount of \$1,125.00 which the Landlords continue to hold. While the Tenant stated that she paid an additional \$1,125.00 to the Landlords for a security system, I find that this does not constitute a security deposit. Should the Tenants feel as though they overpaid the Landlord for a service provided to them, they are at liberty to apply for compensation.

The Landlords are claiming \$6,750.00 in unpaid rent from January to March 2021.

Section 26(1) of the *Act* confirms:

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.

In this case, I accept that the Tenants were required to pay rent in the amount of \$2,250.00. I find that there is no evidence before me to indicate that the Tenants had the right to withhold the rent from January to March 2021. As such, I find that the Tenants breached Section 26 of the *Act*.

I find the Landlords have established an entitlement to a monetary award for unpaid rent in the amount of \$6,750.00. Having been successful, I also find the Landlords are entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlords are entitled to retain the Tenants' security deposit in the amount of \$1,125.00 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 \$5,725.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$6,750.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$1,125.00)
TOTAL:	\$5,725.00

Conclusion

The Landlords are granted a monetary order in the amount of \$5,725.00. The monetary order should be served to the Tenants as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The Landlords' monetary claims for damage or loss have been refused pursuant to sections 59(5)(c) and 59(2)(b) of the *Act*. The Landlords are at liberty to reapply for their monetary claim; however, are encouraged to provide a detailed breakdown of any future monetary claim at the time an application is submitted.

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: August 26, 2021

Residential Tenancy Branch