



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on April 12, 2021, wherein the Landlord requested an Order for monetary compensation from the Tenant, authority to retain their security deposit and recovery of the filing fee.

Only the Landlord's Agent, E.K. called into the hearing. She gave affirmed testimony and was provided the opportunity to present the Landlord's evidence orally and in written and documentary form, and to make submissions to me.

The Tenants did not call into this hearing, although I left the teleconference hearing connection open until 1:40 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord's Agent and I were the only ones who had called into this teleconference.

As the Tenants did not call in, I considered service of the Landlord's hearing package. The Landlord's Agent testified that they served the Tenants with the Notice of Hearing and the Application on April 22, 2021 by email. She further testified that on April 14, 2021 the Landlord sent a text message to both Tenants to advise them they would be receiving an email with legal documents; the Tenants confirmed receipt of the text message and acknowledged they would receive a further email.

I accept the Landlord's Agent's testimony and find the Tenants were duly served as of April 25, 2021, three days after the email was sent, and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's Agent's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord's Agent and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. Should the Landlord be authorized to retain the Tenants' security deposit?
3. Should the Landlord recover the filing fee paid for the application?

Background and Evidence

A copy of the residential tenancy agreement was provided in evidence and which confirmed this tenancy began November 1, 2020; monthly rent was \$2,600.00 and the Tenants paid a \$1,300.00 security deposit.

The Tenants gave notice to end their tenancy on March 21, 2021 with an effective date 10 days later on March 31, 2021. A copy of the email sent by the Tenants to the Landlord was provided in evidence before me. The Landlord sought monetary compensation for loss of rent to April 15, 2021 as the unit was not rented until that time.

The Landlord also sought monetary compensation in the amount of \$50.00 for the cost to repair the walls as the Tenants installed a television wall mount in two rooms and when they left removed the wall mount leaving significant damage. Photos submitted by the Landlord confirmed the damage to the walls.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

A tenant may end a tenancy provided that the notice complies with sections 45 and 52 of the *Act*, which provide as follows:

Tenant's notice

- 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.
- (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.
- (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.
- (4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Documentary evidence submitted by the Landlord confirms the Tenants gave notice to end their tenancy on March 21, 2021 with an effective date 10 days later. As noted above, a tenant must give 30 days notice to end their tenancy as provided for in section 52. I therefore find the Landlord is entitled to recover the \$1,550.00 in loss of rent for April 1-15, 2021. (The Agent stated that the Landlord was not able to re-rent until May 1, 2021, however as that was not clearly stated on the application, I find the Tenant was not given adequate notice of the Landlord's wish to obtain further monetary

compensation. If the Landlord wishes to pursue compensation from the Tenant for unpaid rent after April 15, 2021, the Landlord must give the Tenant notice of that claim. The Landlord is reminded that this does not extend any time limits imposed by section 60 of the *Act*.)

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (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 accept the Landlord's evidence that the Tenants installed two television wall mounts in the rental unit and that due to the size of the mounting hardware the walls were damaged. The Landlord is entitled to recover the \$50.00 claimed for the cost to repair the walls.

As the Landlord has been successful in their Application, I award them recovery of the **\$100.00** filing fee for a total award of **\$1,600.00**.

Conclusion

The Landlord is entitled to **\$1,600.00** in monetary compensation from the Tenants for loss of rent from April 1-15, 2021, the cost to repair the walls and recovery of the filing fee. The Landlord may retain the Tenant's \$1,300.00 security deposit and is granted a Monetary Order for the **\$400.00** balance due. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: October 14, 2021

Residential Tenancy Branch