



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the landlord served the tenants with the notice of hearing package and all of the submitted documentary evidence via Canada Post Registered Mail on May 11, 2021. Both parties also confirmed that the tenants served the landlord with their evidence submissions via Canada Post Registered Mail on October 6, 2021. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for compensation and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on September 1, 2020 on a fixed term tenancy ending on August 31, 2021 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated August 11, 2020. The monthly rent was \$2,900.00 payable on the 1st day of each month. A security deposit of \$1,450.00 was paid.

The landlord seeks a monetary claim of \$1,550.00 which consists of:

\$1,450.00	Compensation, Lease Break Fee
\$100.00	Filing Fee

The landlord provided written details stating that the tenant pre-maturely ended the tenancy by 4 months and vacated the rental unit. The landlord stated that she incurred an expense of \$1,450.00 in hiring a rental agent to re-rent the unit. The landlord referenced a submitted copy of an invoice by her agent dated April 14, 2021.

The tenants provided undisputed affirmed testimony that the tenancy ended with the landlord in mid-April 2021 after notice to end the tenancy was given to the landlord in mid-March 2021. The tenants stated that a condition inspection report for the move-out was completed on April 24, 2021 where no damage was claimed by the landlord.

The tenants confirmed that notice to end the tenancy was given in mid-March 2021 prior to the end of the fixed term tenancy. The tenants stated that the notice to end was for cause as the tenants stated that they had reported a mold issue and the landlord had failed to properly address it.

The tenants dispute the landlord's monetary claim arguing that the agent was in fact the landlord's new tenant. The tenants argued that no evidence of actual payment was made to the agent and that no services were rendered by the agent. The tenants argued and referenced text messages with the landlord's agent that she would be occupying the rental unit as the new tenant. The tenant referenced the agent's

messages which stated that she was interested in renting the rental unit herself with her daughter. The tenants also referenced submitted copies of text messages with the agent that the agent would become the new tenant.

The landlord stated that the agent did become her tenant, but that instead of her payment for services as an agent, both parties had agreed to transfer the debt as payment for the security deposit of the rental unit. The landlord stated that she had a signed and dated handwritten agreement with the agent/new tenant in her files at home but failed to submit it. The landlord stated that she was not aware that this was an issue.

The tenants argued that the landlord had confirmed receipt of their written submission on October 6, 2021 and that the first paragraph their submissions addresses this point. The tenants argued that the landlord has a duty to mitigate any losses and had failed to do so.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, I accept the undisputed affirmed evidence of both parties that the tenancy ended on April 24, 2021 as a result of the tenants providing to the landlord notice to end the tenancy. The tenants provided undisputed evidence that the tenant's notice falls under section 45 (3) of the *Act* in that the landlord has failed to comply with a material term of the tenancy agreement which was not corrected after written notice. The tenants provided undisputed evidence that the tenants gave notice to end the tenancy.

The landlord seeks compensation of \$1,450.00 for the expense of hiring an agent to re-rent the unit due to the tenant's pre-maturely ending the tenancy.

The tenants have also argued that the landlord failed to mitigate any losses. The tenants also argued that the landlord originally engaged an agent to find a new tenant, but that the agent became the landlord's new tenant. The landlord confirmed this in her direct testimony. The tenants argued that the landlord has failed to provide any evidence that a payment for the agent's fee was made. The landlord stated that no actual payment was made, but that the agent's fee was transferred to the landlord in lieu of a security deposit. The landlord stated that a dated and handwritten agreement was made, but that the agreement was not submitted as she was not aware that this was an issue. The tenants argued that the landlord was in receipt of their written submissions which the landlord confirmed receiving. Despite this no evidence has been submitted by the landlord. The tenants have argued that the landlord's took no steps to market the rental unit then moved into the unit herself. I note the landlord did not provide any evidence in support of any services provided by the agent.

Residential Tenancy Branch Policy Guideline #5, Duty to Minimize Loss states in part that a landlord or a tenant claiming compensation for damages or loss has a legal obligation to do whatever is reasonable to minimize the damage or loss.

The tenants have argued that the landlord despite engaging an agent to re-rent the unit were not provided any services. The tenants further argue that the landlord has failed to provide any evidence of payment for any service.

In this case, I find that the tenants provided proper notice to end the tenancy under section 45 (3) of the Act based upon the undisputed evidence of the tenants. I note that the landlord failed to provide any evidence regarding a proper liquidated damages clause informing the tenant of the expense if the tenancy was to be ended prematurely. I also take into consideration the tenants' argument that the landlord despite having been given notice of their argument regarding proof of payment for an agent's service failed to provide any. As such, I find on a balance of probabilities that the landlord has failed to provide sufficient evidence to satisfy me of the claim.

As the tenancy has ended and the landlord still retains the tenants' \$1,450.00 security deposit, I grant the tenants a monetary order for its return forthwith.

Conclusion

The landlord's application is dismissed.

The tenants are granted a monetary order for \$1,450.00.

This order must be served upon the landlord. If the landlord fails to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court of British Columbia and enforced as an Order of that Court.

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: November 5, 2021

Residential Tenancy Branch