



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WILSON RENTALS LTD and [tenant name
suppressed to protect privacy]

DECISION

Dispute Codes LL: MNDCL-S, FFL
 TT: MNSDS-DR, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlord’s Application for Dispute Resolution was made on June 9, 2021, (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Tenants’ Application for Dispute Resolution was made on July 4, 2021 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order granting the return of all or part of the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30PM on December 7, 2021 as a teleconference hearing. Only the Landlord’s Agent appeared at the hearing. No one called in for the Tenants. The conference call line remained open and was monitored for 11 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’s Agent and I were the only persons who had called into this teleconference. As no one attended the hearing for the Tenants in support of their Application, I dismiss the Tenants’ Application without leave to reapply.

The Landlord's Agent was given the 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
3. Is the Landlord entitled to retain the Tenants' security deposit pursuant to Section 38 of the *Act*?

Background and Evidence

The Landlord's Agent testified to the following; the tenancy began on May 15, 2021. The Tenants were required to pay rent in the amount of \$1,550.00 to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$775.00 which the Landlord continues to hold.

The Landlord's Agent stated that the Tenants provided the Landlord with their notice to end tenancy on May 27, 2021 with an effective date of June 1, 2021. The Landlord's Agent stated that the Tenants did not provide sufficient notice to end their tenancy. The Landlord's agent stated that the Tenants did not actually vacate the rental unit until June 5, 2021 and returned their keys on June 12, 2021. The Landlord's Agent stated that he received the Tenants' forwarding address on June 6, 2021. The Landlord's Agent stated that he found a new occupant to move into the rental unit on June 15, 2021. As such, the Landlord is claiming for loss of rent from June 1 to June 15, 2021 in the amount of \$775.00. If successful, the Landlord is also claiming for the return of the filing fee.

Analysis

Based on all of the above, the evidence and testimony, 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 Landlord 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 Tenants. Once that has been established, the Landlord 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.

According to Section 45 (1) of the *Act*; 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.

In this case, I accept that the Tenants provided the Landlord with their notice to end tenancy on May 27, 2021 before they moved out on June 5, 2021. I find that the Tenants ended the tenancy early, without providing the Landlord with proper notice pursuant to Section 45(1) of the *Act*.

I accept that the Landlord advertised the rental unit and found a new occupant for June 15, 2021. I accept that the Landlord suffered a loss of rent equivalent to half a month of rent in the amount of \$775.00. In light of the above, I find that the Landlord has established an entitlement to compensation in the amount of **\$775.00**.

Having been 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 held 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 \$100.00, which has been calculated as follows:

Claim	Amount
Loss of Rent	\$775.00
Filing fee:	\$100.00
<i>LESS security deposit:</i>	<i>(\$775.00)</i>
TOTAL:	\$100.00

Conclusion

The Tenants breached Section 45 of the *Act*. Pursuant to section 67 of the *Act*, the Landlord is granted a monetary order in the amount of \$100.00. The monetary order must be served on the Tenants 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: December 07, 2021

Residential Tenancy Branch