



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: MNSDB-DR FFT
For the landlord: MNDL-S MNRL-S MNDCL-S FFL

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for a monetary order of \$10,850.00 for unpaid rent or utilities, for loss of rent, for damages to the unit, site or property, for authorization to retain all or part of the security deposit and pet damage deposit, and to recover the filing fee. The tenants applied for a monetary order for \$1,650.00 for the return of their security deposit and pet damage deposit, and to recover the filing fee.

The landlords, DP and PP (landlords) and the tenants, LG (aka LD) and PL (tenants) attended the teleconference hearing and were affirmed. The hearing process was explained, evidence was reviewed, and the parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed testimony evidence and to make submissions to me. I have considered all of the evidence that was submitted in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules), and testimony provided. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was

surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

In addition, the landlords were advised that the landlords' application related to damages was being refused, pursuant to section 59(5)(c) of the Act because their application for dispute resolution did not provide sufficient particulars of their claim for the breakdown of damages as is required by section 59(2)(b) of the Act. For example, the landlord neglected to submit a Monetary Order Worksheet (worksheet) and as such, provided no specific amounts or breakdown of how they arrived at the amount claimed for damages and what it was comprised of.

I find that proceeding with the landlords' claim for damages at this hearing would be prejudicial to the tenants, as the absence of particulars that set out how the landlord arrived at the amount of \$6,550.00 in damages makes it difficult, if not impossible, for the tenants to adequately prepare a response to the landlords' claim.

The landlords are at liberty to reapply for their damages claim; however, are reminded to provide a detailed breakdown of their monetary claim and are encouraged to use the Monetary Order Worksheet (RTB-37) available at:

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/forms/forms-listed-by-number>

Issues to be Decided

- Is the landlord entitled to a monetary order for unpaid rent and loss of rent, and if so, in what amount?
- Are the tenants entitled to the return of any amount of their combined deposits under the Act?
- Is either party entitled to the recovery of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy agreement began on August 1, 2020 and was scheduled to revert to a month-to-month tenancy after July 31, 2021. According to the tenancy agreement, monthly rent of \$2,100.00 was due on the first day of each month. The tenants paid a security deposit of \$1,050.00 and a pet damage deposit of \$500.00 at the start of the tenancy (\$1,550.00 in combined deposits), which the landlords continue to hold.

The landlords are seeking \$2,100.00 in unpaid rent for July 2021 and loss of rent of \$2,100.00 for August 2021, plus the filing fee.

Both parties were asked how the tenancy ended. The tenants first testified that they were given a notice to end the tenancy and had a mutual agreement to end the tenancy. The landlords stated that neither was true and that the tenants abandoned the rental unit in July 2021 without paying the last month's rent and due to the condition of the rental unit, the landlords lost rent for August 2021 due to damages in the rental unit caused by the tenants.

The tenants eventually admitted that they had vacated the rental unit in the end of June 2021 or July 1, 2021. The tenants also confirmed that they did not provide any written notice to the landlords prior to vacating the rental unit. The tenants made mention of July 2, 2021, which would have been after vacating the rental unit.

The parties confirmed that the tenants provided their written forwarding address on or about July 2, 2021 and the landlord filed their application claiming towards the combined deposits on July 7, 2021.

The landlords testified that they have not been able to re-rent the rental unit due to the damages caused by the tenants. The landlords also confirmed that they did not submit any photographic evidence to support any of the damages that they indicate prevented them from re-renting the rental unit. The landlords confirmed that to this date, the rental unit has not been re-rented.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Unpaid rent – Firstly, the tenants confirmed that they did not pay rent for July 2021 of \$2,100.00. In addition, I find the tenants breached section 26 of the Act that applies and states:

Rules about payment and non-payment of rent

26(1) 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.

[emphasis added]

I find the tenants provided no evidence that they had any right under the Act to deduct any portion of July 2021 rent. As a result, I find the landlord me the burden of proof and I grant the landlords **\$2,100.00** for unpaid rent for July 2021. I find the tenants did not end the tenancy in a method provided for under section 45 of the Act.

Regarding loss of rent for August 2021, I find the landlords failed to meet the burden of proof for loss of August 2021 rent as I have no photo evidence of any damages to the rental unit and no Condition Inspection Report to support the landlords' testimony. Therefore, I dismiss loss of August 2021 rent without leave to reapply, due to insufficient evidence.

As the landlords filed their application on July 7, 2021 and the parties confirmed that the tenants' written forwarding address was provided on July 2, 2021, I find the landlords applied against the tenants' combined deposits of \$1,550.00 within the 15-day timeline provided under section 38 of the Act.

As the landlords were successful with a portion of their application, I find the landlords are entitled to the recovery of their **\$100.00** filing fee and I grant that amount pursuant to section 72 of the Act. Given the above, I find the landlords have established a total monetary claim of **\$2,200.00** comprised of \$2,100.00 for unpaid July 2021 rent and the filing fee.

As a result, I **authorize** the landlords to retain the tenants' full combined deposits of \$1,550.00, which have accrued \$0.00 in interest, in partial satisfaction of the landlords' claim. I **grant** the landlords a monetary order pursuant to section 67 of the Act for the balance owing by the tenants to the landlords in the amount of **\$650.00**.

The tenants' claim is dismissed in full without leave to reapply as the tenants do not have any right to the return of their combined deposits as it has been applied to unpaid rent under the Act. Their filing fee is not granted as a result.

Conclusion

The damages portion of the landlords' claim was dismissed with leave to reapply.

The tenants' claim is dismissed without leave to reapply.

The landlords have established a total monetary claim of \$2,200.00 as indicated above.

The landlords have been authorized to retain the tenants' full combined deposits of \$1,550.00 in partial satisfaction of the landlords' \$2,200.00 award. The landlords have been granted a monetary order pursuant to section 67 of the Act for the balance owing by the tenants to the landlords in the amount of \$650.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The tenants are reminded that they can be held liable for all costs related to the enforcement of the monetary order.

This decision will be emailed to both parties.

The monetary order will be emailed to the landlords only for service on the tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 10, 2022

Residential Tenancy Branch