



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: MNDCT, OLC, FFT
 LL: MNRL-S, MNDCL-S, FFL

Introduction

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

The Tenants’ Application for Dispute Resolution was made on June 2, 2022 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- a monetary order for damage or compensation;
- an order that the Landlord comply with the Act; and
- an order granting recovery of the filing fee.

The Landlords’ Application for Dispute Resolution was made on September 15, 2022 (the “Landlords’ Application”). The Landlords applied for the following relief, pursuant to the *Act*:

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

The Tenant K.J. and the Landlord K.S. attended the hearing at the appointed date and time. At the start of the hearing the parties confirmed service and receipt of their respective Applications and documentary evidence packages. As there were no issues raised, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

Preliminary Matters

At the start of the hearing, the parties confirmed that the tenancy has ended. As such, I find that the Tenants' claim for an order that the Landlord comply with the Act is now moot. I therefore dismiss this claim without leave to reapply.

Issue(s) to be Decided

1. Are the Tenants entitled to a monetary order for compensation, pursuant to Section 67 of the *Act*?
2. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
3. Are the Landlords entitled to a monetary order for unpaid rent or utilities, pursuant to Section 67 of the *Act*?
4. Are the Landlords entitled to a monetary order for money owed or compensation for damage or loss pursuant to Section 67 of the *Act*?
5. Are the Landlords entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
6. Are the Landlords entitled to retain the Tenants security deposit pursuant to Section 38 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on December 1, 2021. The parties entered into a new one-year fixed term tenancy agreement on April 1, 2022 until March 31, 2023. The Tenants were required to pay rent in the amount of \$2,100.00 which was due on the first day of each month. The Tenants paid a security deposit in the amount of \$900.00 which the Landlords continue to hold. The tenancy ended early on August 31, 2022. The Landlord received the Tenants' forwarding address on August 31, 2022.

Tenants' Claim

The Tenants are claiming \$900.00 which represents an over payment of rent in the amount of \$300.00 for the months of June, July, and August 2022. The Tenant stated that the parties had entered into a new fixed term tenancy agreement commencing on April 1, 2022 as the Tenant wished to have his sister added to the tenancy. The Tenant stated that with having the additional occupant, the parties agreed that the rent would

increase by \$300.00 each month, to \$2,100.00. The parties provided a copy of the signed tenancy agreement in support.

The Tenant stated that the parties had a verbal agreement where if the Tenant's sister moved out, the rent would revert to the previous rent amount of \$1,800.00. The Tenant stated that he and his sister travelled during the month of May 2022, and that the Tenant's sister decided to not return to the rental unit commencing June 1, 2022.

The Tenant stated that despite his many requests, the Landlords were unwilling to sign a new tenancy agreement, reducing the monthly rent. As such, the Tenants are seeking the return of \$900.00. The Tenants requested the return of their deposits; however, this request will be addressed through the Landlord's claim to retain the Tenant's security deposit.

The Landlord responded by stating that there was no verbal agreement between them that if the Tenant's sister vacated the rental unit, the rent would be reduced. The Landlord stated that the Tenant's sister's possessions remained in the rental unit until the end of the tenancy. The Landlord stated that the tenancy agreement signed between the confirms the rent due is \$2,100.00.

If successful, the Tenants are seeking the return of the filing fee.

Landlords' Claim

The Landlord submitted a monetary order worksheet which outlined the following claims;

The Landlord is claiming for loss of September 2022 rent in the amount of \$2,100.00. The Landlord stated that the Tenant had initially provided their written notice to end tenancy to the Landlord on July 1, 2022, with an effective vacancy date of September 30, 2022. The Landlord stated that she advertised the rental unit and conducted regular showings in order to re-rent the rental unit as of October 1, 2022.

The Landlord stated that on August 26, 2022 she received a text message, followed by an email from the Tenant stating that they would be vacating the rental unit as of August 31, 2022. The Landlord stated that given the short notice, she was unable to re-rent the rental unit for September 1, 2022.

The Tenant stated that the parties had a verbal agreement that the Tenant could vacate the rental unit at the end of August 2022. The Landlord denied having agreed that the Tenant could vacate the rental unit on such short notice.

The Landlord is seeking to recover the loss of utilities in the amount of \$119.49. The Landlord stated that the Tenants are responsible for paying 40% of the utilities at the rental property, which they were meant to pay to the Landlords. The Landlords provided three unpaid utility bills in support.

The Landlord stated that the Tenant owes \$15.84 for a gas bill from August 27 to September 27, 2022. The Landlord is claiming \$93.60 for a water bill from June 20 to September 30, 2022. The Landlord is also claiming \$10.05 for a hydro bill from September 14 to September 30, 2022.

The Tenant stated that they should not be responsible for paying for utilities following the end of the tenancy.

The Landlords are claiming to retain the Tenants' security deposit and also for the return of the \$100.00 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 Applicants 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 Respondents. Once that has been established, the Applicants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Applicants did what was reasonable to minimize the damage or losses that were incurred.

The Tenants' Claim

The Tenants are claiming \$900.00 which represents an over payment of rent in the amount of \$300.00 for the months of June, July, and August 2022.

According to Section 14 of the Residential Tenancy Act;

(1) A tenancy agreement may not be amended to change or remove a standard term.

(2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

I am satisfied that the parties entered into a new tenancy agreement effective April 1, 2022 which required the Tenants to pay rent in the amount of \$2,100.00 to the Landlords each month. I find that the Tenants provided insufficient evidence that the parties had an agreement to revert the rent due depending on if the Tenant's sister

occupied the rental unit or not. As such, I find that the Tenants were required to pay rent in the amount of \$2,100.00 regardless of how many occupants occupied the rental unit. I therefore dismiss the Tenants' application without leave to reapply.

Landlords' Claims

The Landlords are claiming for loss of September 2022 rent in the amount of \$2,100.00 as the Tenants provided their notice to end tenancy to the Landlords on August 26, 2022 before vacating the rental unit on August 31, 2022.

According to Section 45 of the *Act*, 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.

The Residential Tenancy Policy Guideline #30 states that during the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties. A tenant may end the tenancy if the landlord has breached a material term of the tenancy agreement. The tenant must give proper notice under the Legislation. Breach of a material term involves a breach which is so serious that it goes to the heart of the tenancy agreement.

In this case I find that the Tenants were not permitted to end the fixed term tenancy agreement. I accept that Landlords were preparing to re-rent the rental unit for October 1, 2022, however, the Tenants notified the Landlords on August 26, 2022 that the tenancy would be ending on August 31, 2022. I find that the Landlords suffered a loss of rent for September 2022 and are therefore entitled to compensation in the amount of **\$2,100.00**.

The Landlords are claiming for unpaid utilities totalling \$119.49. I accept that the Tenants were required to pay 40% of the utilities during the tenancy. I accept that the tenancy ended on August 31, 2022. While the Landlords are seeking to recover utility charges from the Tenants throughout September 2022, I find that the Tenants should not be expected to pay a portion of the utilities that they did not use. I find that the Landlords did not provide a detailed calculation of the cost of utilities used by the Tenants during the billing cycle during which the Tenants did occupy the rental unit. As

such, I dismiss the Landlords' claims for compensation relating to unpaid utilities without leave to reapply.

Having been partial successful with their Application, I find the Landlords are entitled to the recovery the **\$100.00** filling fee. I further find it appropriate in the circumstance to order that the Landlords retain the Tenants' security deposit in partial satisfaction of their claim.

In summary, I find the Landlords has demonstrated an entitlement to a monetary award of \$1,300.00, which has been calculated as follows:

Claim	Award
Loss of rent:	\$2,100.00
Filling fee:	\$100.00
<i>Less Security Deposit:</i>	<i>-\$900.00</i>
TOTAL:	\$1,300.00

Conclusion

Pursuant to section 67 of the Act, the Landlords are granted a monetary order in the amount of \$1,300.00. 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: February 20, 2023

Residential Tenancy Branch