



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ONNI PROPERTY MANAGEMENT SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCL-S, FFL**

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on July 11, 2022 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

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

The hearing was scheduled for 1:30pm on June 19, 2023 as a teleconference hearing. Only the Landlords' Agents B.B. and G.H. attended the hearing at the appointed date and time. No one appeared for the Tenant. The conference call line remained open and was monitored for 10 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 Agents and I were the only persons who had called into this teleconference.

The Landlord's Agents testified that they served the Landlord's Application and documentary evidence to the Tenant by Canada Post Registered Mail on July 22, 2022. The Landlord submitted a copy of the Registered Mail receipt in support. Pursuant to Section 89 and 90 of the Act, the Tenant is deemed to have been served with the above-mentioned documents five days later, on July 27, 2022. I note that the Tenant submitted evidence in response to the Landlord's Application, however, no one attended the hearing for the Tenant to present the evidence for my consideration.

The Landlord's Agents were provided with a full 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

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

Background and Evidence

The Landlord's Agents testified that the fixed term tenancy began on December 1, 2021 and was meant to continue until November 30, 2022. During the tenancy, the Tenant was required to pay rent in the amount of \$2,525.00 to the Landlord on the first day of each month. The Tenant paid a security deposit and a pet damage deposit, each in the amount of \$1,262.50 which the Landlord continues to hold. The Landlord's Agents stated that the tenancy ended early on June 30, 2022.

The Landlord is seeking monetary compensation in the amount of \$1,262.50 for the costs associated in re-renting the rental unit as a result of the Tenant ending the fixed term tenancy agreement early. The Landlord's Agents confirmed that they received an email from the Tenant on May 31, 2022 indicating that they wished to end the tenancy effective June 30, 2022.

The Landlord's Agents stated that the Landlord was required to employ an Agent to re-rent the rental unit which is commission based. The Landlords' Agents stated that commission was equivalent to half a month of rent. Furthermore, there were costs associated with advertising the rental unit. The Landlord's Agents referred to a liquidated damages term in the tenancy agreement which stated that the Tenant would be responsible for paying \$1,262.50 in the event that they ended the fixed term tenancy early. The Landlord submitted a copy of the tenancy agreement in support. If successful, the Landlord is also seeking the return of the \$100.00 filing fee.

No one appeared for the Tenant to dispute the Landlord's Agents' claim.

Analysis

Based on the uncontested oral testimony and documentary evidence, 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 Tenant. 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.

The Landlord is seeking compensation in the amount of \$1,262.50 for the costs associated in re-renting the rental unit as a result of the Tenant ending the fixed term tenancy agreement early. 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.

I find that the Tenant was not entitled to end the fixed term tenancy early. I accept that the tenancy agreement contains a liquidated damages clause which outlines that the Tenant is responsible for pay costs incurred by the Landlord should the Tenant break the fixed term tenancy.

According to the Residential Policy Guideline #4; a liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

In this case I find that the Landlord did what was necessary to mitigate their losses and was able to re-rent the rental unit immediately. I find that the Landlord's claim is reasonable, and they have provided sufficient evidence to support the loss in the amount of \$1,262.50. As such, I find that the Landlord is entitled to compensation in the amount of **\$1,262.50**.

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 \$1,362.50 from the \$2,525.00 security and pet damage deposits held in satisfaction of the claim ($\$2,525.00 - \$1,362.50 = \$1,162.50$)

Pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of \$1,162.50, which represents the remaining balance of their security and pet damage deposits less the previously mentioned deductions.

Conclusion

The Landlord has established an entitlement to monetary compensation in the amount of \$1,362.50 which has been deducted from the Tenant's security and pet damage deposits. The Tenant is granted a monetary order in the amount of \$1,162.50 which represents the remaining balance of the Tenant's deposits. The order should be served to the Landlord as soon as possible 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: June 19, 2023