



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT / MNRL-S, MNDCL, FFL

Introduction

The hearing was convened following applications for dispute resolution (Applications) from both parties under the *Residential Tenancy Act* (the Act), which were crossed to be heard simultaneously.

The Tenants seek the following:

- Compensation of \$27,700.00 under section 51 of the Act because their tenancy ended due to a Two, Four, or Twelve Month Notice to End Tenancy for Landlord's Use of Property and the Landlords did not use the rental unit or site for the stated purpose; and
- To recover the cost of the filing fee from the Landlords under section 72 of the Act.

The Landlords seek the following:

- A Monetary Order for unpaid rent under sections 26 and 67 of the Act;
- A Monetary Order for loss under the Act, *Residential Tenancy Regulation* (the Regulation), or tenancy agreement, under section 67 of the Act;
- Authorization to retain all the Tenants' security deposit under section 38 of the Act; and
- To recover cost of the filing fee for their Application from the Tenants under section 72 of the Act.

Both Tenants attended the hearing. One of the Landlords and an Agent for the Landlords attended the hearing. The Landlord and their Agent were also assisted by the Landlords' son acting as a translator.

As both parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the Notice of Dispute Resolution Package (the Materials) and evidence for the other parties' Application. Based on their testimonies I find that each party was served with these Materials and evidence as required under sections 88 and 89 of the Act.

Preliminary Issues – Amendment and Notice to End Tenancy

The Tenants listed the Landlords' Agent as the sole Respondent in their Application. The Landlord attending the hearing confirmed they had no issues with their Agent being served on their behalf, though had not listed their Agent as a party to their own Application. Given this, under section 64(3)(c) of the Act I amend the Tenants' Application to add the Landlords' names in order to mirror the Landlords' Application.

The Tenants applied for compensation under section 51 of the Act on the basis that the tenancy ended under a Two, Four or Twelve Month Notice to End Tenancy. The parties agreed that the tenancy was not ended under one of these Notices to End Tenancy and none had been served to the Tenants, though the tenancy agreement contained a vacate clause.

Whilst tenants are able to apply for compensation under section 51.1 of the Act, should a tenancy agreement contain a requirement to vacate, the Tenants did not do this in this case. However, the Tenants stated their Application was made on the basis of the vacate clause and they may have made an error when submitting their Application. The Landlord confirmed they did not understand the Tenants' Application related to the vacate clause and were not prepared to discuss this issue at the hearing.

Given this, I dismiss the Tenants' Application under section 51 of the Act without leave to reapply, as the tenancy did not end under a Two, Four or Twelve month Notice to End Tenancy.

Whilst arbitrators have discretion to amend applications, including adding or amending claims, given the Landlord testified they did not understand the Tenants' Application related to the vacate clause, I am not inclined to amend the Application as it would be procedurally unfair for the Landlords to have to answer a claim against them which they were not prepared for.

Issues to be Decided

Are the Landlords entitled to a Monetary Order for unpaid rent?

Are the Landlords entitled to a Monetary Order for loss or other money owed?

Are the Landlords authorized to retain the security deposit?

Are either party entitled to recover the filing fee for their Application?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy began on September 1, 2019 for a fixed term ending August 31, 2021 and continuing on a month-to-month basis thereafter.
- The parties signed an additional tenancy agreement whereby the agreement commenced on July 21, 2022 for a fixed term ending on August 31, 2023 with a requirement to vacate.
- The Tenants vacated the rental unit on September 1, 2023.
- Rent was \$2,300.00 per month due on the first day of the month when the tenancy ended.
- A security deposit of \$1,100.00 was paid by the Tenants which the Landlords still hold.
- There are written tenancy agreements, copies of which were entered into evidence.

The Landlord and their Agent testified as follows. The Tenants did not pay the full \$2,300.00 owed for the final month of the tenancy, due August 1, 2023. The Tenants paid \$1,000.00, then at the move out inspection on September 1, 2023 authorized the Landlords to retain the \$1,100.00 security deposit, so a further \$200.00 is owed in unpaid rent. They communicated with the Tenants about this and the Tenants said they would pay by September 18, 2023, which they did not do.

When the tenancy ended, the Landlords found out the Tenants owed \$1,000.36 in unpaid utilities and the Tenants agreed to pay this, as confirmed on the end of tenancy condition report. The Landlords then found out the Tenants had not paid a water bill in

the amount of \$332.37. Copies of the water bill and inspection report were entered into evidence by the Landlords.

The Tenants testified as follows. They had agreed for the Landlords to retain the security deposit to cover unpaid rent for August 2023, and agreed they paid \$1,000.00, leaving \$200.00 owing.

Though the condition report had been signed, confirming they agree to pay the Landlords \$1,000.36 in respect of unpaid utilities, they had not been provided with copies of the utility bills to confirm the requested payment was accurate.

The Tenants stated they were also not provided with a copy of water bill as part of the Landlords' evidence.

Analysis

Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure* states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Are the Landlords entitled to a Monetary Order for unpaid rent?

Based on the evidence before me and the testimony of both parties I find the tenancy agreement required the Tenants to pay monthly rent of \$2,300.00 to the Landlords from August 1, 2022 until the fixed term ended on August 1, 2023.

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent.

It was undisputed by the parties that the Tenants had paid \$1,000.00 to the Landlords in respect of the rent due on August 1, 2023, the final month of the tenancy. The parties also agreed the Tenants authorized the Landlords to retain the security deposit of \$1,100.00 in partial satisfaction of unpaid rent, and \$200.00 was still owed.

Given the above, I find the Landlords have established their claim for unpaid rent and therefore, under section 67 of the Act, I issue a Monetary Order for \$200.00 to the Landlords accordingly.

Are the Landlords entitled to a Monetary Order for loss or other money owed?

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the Landlords must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the Landlords followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Landlords seek to recover \$1,332.73 in unpaid utilities which is made up of \$1,000.36 due when the tenancy ended plus a further \$332.37 for a water bill received some time after the Tenants had vacated the rental unit.

Based on the tenancy agreement, I find utilities are not included in rent, therefore the Tenants would be obligated to pay these costs themselves. Based on the copy of the condition inspection report, I find the Tenants are seen to acknowledge outstanding utilities of \$1,000.36 are owed to the Landlords. Though copies of the utility bills making up the \$1,000.36 requested were not entered into evidence, I find the Tenants' written agreement to pay this amount sufficient evidence to establish the Landlords' claim.

Additionally, I find the copy of the water bill entered into evidence shows an outstanding amount of \$332.37 as of August 28, 2023, which falls within the dates the tenancy was active.

Given the above, I find the Landlords have established their claim for unpaid utilities in the amount of \$1,332.73 and I issue a Monetary Order to the Landlords under section 67 of the Act for this amount.

Are the Landlords authorized to retain the security deposit?

Section 38(1) of the Act requires a landlord to either repay the security deposit to the tenant or make an application for dispute resolution claiming against the security deposit within fifteen days of the tenancy ending and receiving the tenant's forwarding address in writing, whichever is later.

A landlord may also retain the security deposit if they either have authority from an arbitrator, or written agreement from the tenant to do so as set out in sections 38(3) and 38(4) of the Act.

Based on the condition inspection report entered into evidence, and the testimony of both parties, I find the Tenants authorized the Landlords to retain the \$1,100.00 security deposit in partial satisfaction of the unpaid rent still owed by the Tenants to the Landlords as of September 1, 2023. Given this, per section 38(4)(a) of the Act, the Landlords are entitled to retain the security deposit as they have the Tenants' written consent to do so.

Are either party entitled to recover the filing fee for their Application?

As the Tenants' Application was not successful, they must bear the cost of the filing.

As the Landlords' Application was successful, I order the Tenants to pay the Landlords the amount of \$100.00 in respect of the filing fee in accordance with section 72 of the Act.

Conclusion

The Tenants' Application is dismissed without leave to reapply.

The Landlords' Application is granted.

The Landlords are issued a Monetary Order. A copy of the Monetary Order is attached to this Decision and must be served on the Tenants. It is the Landlords' obligation to serve the Monetary Order on the Tenants. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

Item	Amount
Unpaid rent	\$200.00
Unpaid utilities	\$1,332.73
Filing fee	\$100.00
Total	\$1,632.73

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 13, 2024

Residential Tenancy Branch