



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remax Kelowna Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The named landlord attended the hearing and also represented the landlord company. However, despite being served with the Landlord's Application for Dispute resolution and notice of hearing documents by registered mail on January 26, 2015, no one for the tenant attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and the only participant who joined the call was the landlord. The landlord testified that the documents were served on that date and in that manner and has provided a copy of the Canada Post receipt bearing that date and the Registered Domestic receipt as evidence, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

During the course of the hearing, the landlord advised that the tenant has moved out of the rental unit, the landlord has possession, and the landlords' application for an Order of Possession is withdrawn.

Issue(s) to be Decided

The issues remaining to be decided are:

- Have the landlords established a monetary claim as against the tenant for unpaid rent or utilities?
- Have the landlords established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy

agreement, and more specifically for liquidated damages and damage to the unit?

- Should the landlords be permitted to keep the security deposit in full or partial satisfaction of the claims?

Background and Evidence

The landlord testified that this fixed-term tenancy began on March 1, 2014 and expires February 28, 2015, however the tenant moved out on December 31, 2014, leaving a roommate at the rental unit. Rent in the amount of \$1,400.00 per month is payable in advance on the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$700.00 which is still held in trust by the landlord and no pet damage deposit was collected. A copy of the tenancy agreement has been provided.

The landlord further testified that the tenant notified the landlord of his intention to move out, however neither the tenant nor the tenant's roommate paid rent for the month of January, 2015. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided. The notice states that the tenant failed to pay rent in the amount of \$1,400.00 that was due on January 1, 2015 and is dated January 12, 2015 with an expected date of vacancy of January 22, 2015.

The roommate stayed in the rental unit until about January 28, 2015, however a move-out condition inspection report was completed with the tenant present on January 22, 2015. A copy of the report has been provided which is dated January 22, 2015 at move-out and also contains the condition at the beginning of the tenancy. The landlord and the tenant have signed both the move-in and move-out portions of the form and it contains a forwarding address of the tenant. The landlords claim \$500.00 for damages and have also provided receipts for cleaning in the amount of \$189.00, carpet cleaning in the amount of \$162.75; and \$151.15 for patching, painting fixing a door handle and replacing burned out light bulbs. The landlord testified that a lot of bulbs were burned out, a door handle on the ensuite door was broken, and the move-in/move-out condition inspection reports verify that. He also testified that little painting was done, but patching and painting was required to bring the rental unit to a state where it could be shown to prospective tenants. The Landlord's Application for Dispute Resolution claims \$500.00, but once receipts were obtained the amounts added to \$502.90.

The landlords also claim liquidated damages in the amount of \$700.00 for ending the tenancy early. The tenancy agreement has an Addendum which states, in part: "Tenant agrees to pay liquid damages in the amount of \$700.00 should they break their lease. This would mean that the tenant moves out with or without notice, prior to the conclusion of the day indicated on their tenancy agreement. This addendum point would be voided should there be an agreement to end the tenancy." The landlord testified that the parties did not agree in writing to end the tenancy earlier.

Analysis

Firstly, with respect to the unpaid rent, in the absence of any evidence to the contrary, I am satisfied that the landlords are owed rent for the months of January and February, 2015. The amounts are consistent with the tenancy agreement and the notice to end the tenancy, and I find that the landlords have established a claim in the amount of \$2,800.00.

I am also satisfied that the tenant agreed to liquidated damages in the amount of half a month's rent if the tenancy ended earlier than indicated on the tenancy agreement unless there was an agreement by the parties to end the tenancy earlier, and there was no such agreement.

With respect to the claim for damages, I have reviewed the move-in and move-out portions of the condition inspection reports and I am satisfied that the damages claimed are beyond normal wear and tear, and I find that the landlords have established a monetary claim in the amount of \$502.90.

Since the landlords have been partially successful with the application, the landlords are also entitled to recovery of the \$50.00 filing fee.

I hereby order the landlords to keep the \$700.00 security deposit in partial satisfaction of the claim and I grant a monetary order for the difference in the amount of \$3,352.90.

Conclusion

For the reasons set out above, the landlords' application for an Order of Possession is hereby dismissed as withdrawn.

I hereby order the landlords to keep the \$700.00 security deposit, and I grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,352.90.

This order is final and binding and may be enforced.

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 12, 2015

Residential Tenancy Branch

