



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN MND MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) by the landlords under the *Residential Tenancy Act* (the “Act”) for an order of possession based on the tenants’ notice to end tenancy, for a monetary order for unpaid rent or utilities, for damage to the unit, site or property, for authorization to retain all or part of the tenants’ security deposit and pet damage deposit, and to recover the cost of the filing fee.

Tenant S.B. (the “tenant”) and landlord J.N. (the “landlord”) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The tenant confirmed that she received the documentary evidence from the landlords and had the opportunity to review that evidence prior to the hearing. The tenants did not serve documentary evidence on the Residential Tenancy Branch or the landlords in response to the landlords’ Application.

Preliminary and Procedural Matter

At the outset of the hearing, the landlord requested to withdraw the landlords’ request for an order of possession as the tenants vacated the rental unit on February 1, 2016. As such, an order of possession will not be considered further in this Decision.

Issues to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?

- What should happen to the tenants' security deposit and pet damage deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on October 1, 2014 and reverted to a month to month tenancy after September 30, 2015. Monthly rent in the amount of \$1,350.00 was due on the first day of each month. The tenants paid a security deposit of \$675.00 and a pet damage deposit of \$675.00 at the start of the tenancy which the landlords continue to hold. The parties agreed that the tenants vacated the rental unit on February 1, 2016

As the landlords initially applied for a monetary order in the amount of \$2,250.00 they are limited to that amount. Although the landlords submitted a monetary order worksheet in their evidence in the amount of \$2,767.00, the landlords failed to amend their Application and serve that amendment on the respondents. As a result, I find the landlords did not comply with the Rules of Procedure which is why they are limited to the initial monetary claim of \$2,250.00. I find that any amount higher than \$2,250.00 would be contrary to the rules of natural justice and administrative fairness as the respondents have the right to know the case against them prior to the hearing. The only exception is a mutually settled agreement between the parties in accordance with section 63 of the *Act*.

Given the above, the landlords' monetary claim of \$2,250.00 is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Loss of February 2016 rent	\$1,350.00
2. Unpaid utilities	\$350.00
3. Damages	\$550.00
TOTAL	\$2,250.00

Settlement Agreement

During the hearing, the parties agreed on a mutually settled agreement regarding some of the items being claimed by the landlord. The items which have been agreed upon by the parties have been organized into a table below for ease of reference. As a result,

the corresponding items will not be included in the analysis section of this decision as all matters which form part of the settlement agreement were agreed upon by the parties, pursuant to section 63 of the *Act*, and form a final and binding agreement between the parties as mutually resolved matters related to this tenancy.

Settlement Agreement Item Number	Agreed upon compensation to landlord by tenants
Item 2 – Unpaid utilities	\$411.43
Item 3 – Portion of item 3 as follows: 3A. Carpet cleaning : \$230.00 3B. Repair in hole in wall and related cleaning: \$215.00	3A. \$230.00 <u>3B. \$215.00</u> \$445.00
TOTAL AMOUNT AGREED BETWEEN THE PARTIES VIA MUTUALLY SETTLED AGREEMENT	\$856.43

Evidence related to remainder of Landlords' claim

Regarding item 1, the parties agreed that the tenant sent an email on January 15, 2016 indicating that the tenants would be vacating the rental unit on or about February 5, 2016. The tenants vacated the rental unit on February 1, 2016 and the landlords were able to secure new tenants effective March 1, 2016. The landlord stated that they suffered a loss of February 2016 rent in the amount of \$1,350.00 as a result.

Regarding the remainder of item 3, the landlords are claiming \$105.00 as the balance of the item 3 total amount for the cost of the blind repair to the foyer blind. The tenant denied that the foyer blind was damaged by the tenants. The landlords submitted in evidence an estimate in the amount of \$170.91 for the cost of a metal blind, which includes taxes. The outgoing condition inspection report indicates that the sidelight blind (foyer blind) "damaged at front door".

The tenant confirmed that she knew about the February 5, 2016 outgoing condition inspection but could not be there. A second opportunity was provided for the tenant to do the condition inspection report on February 11, 2016 and the tenant did not attend. Instead, the tenant's father and younger brother attended. The landlord stated that the agent for the landlords chose not to proceed with the walkthrough as the tenant was not present.

The landlords did not submit photographic evidence of the damage to the foyer blind. The landlord stated that the foyer blind is about three years old now and about one year old when the tenancy began. The landlord stated that dogs typically damage blinds by jumping up on them and they bend. The tenant had a dog but denies that the foyer blind was damaged. The incoming condition inspection report indicates that the window coverings in the entry area were good condition which is indicated by a checkmark on the condition inspection report. The tenant claims that the foyer blind was not damaged when she vacated the rental unit and that any damage must have been after the tenancy ended.

Analysis

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

Item 1 – Based on the evidence before me, I am satisfied that the tenants breached section 45 of the *Act* by failing serve proper written notice to end the tenancy, and instead, relied on an email just two weeks before the end of the month. For the tenants to have provided proper written notice, the tenants would have had to have served their written notice on the landlord before the end of December 2015 for the notice to be effective at the end of January 2016 as rent was due on the first day of each month. Given the above, I find the landlords have met the burden of proof and are entitled to the loss of January 2016 rent in the amount of **\$1,350.00**. Furthermore, I find that the landlords complied with section 7 of the *Act* by securing new tenants effective March 1, 2016. Section 7 of the *Act* requires that any party who submits a monetary claim to minimize the damage or loss by doing what is reasonable under the *Act*.

Item 3 - The landlords are claiming \$105.00 for damage to the foyer blind. In the matter before me, the tenant stated that she could not attend the first appointment and did not attend the second appointment for the condition inspection so had her father and younger brother attend the outgoing condition inspection. Section 15 of the *Residential Tenancy Regulation* applies and states:

Tenant may appoint an agent

15 (1) The tenant may appoint an agent to act on his or her behalf to attend a condition inspection and sign a condition inspection report described in section 23 or 35 of the Act.

(2) The tenant must advise the landlord, in advance of the condition inspection, that an agent will be acting for the

tenant in respect of the condition inspection and condition inspection report.

- (3) The landlord must not accept an appointment or act as the tenant's agent for the purposes of subsection (1).

[my emphasis added]

Given the above, I find the tenant has provided insufficient evidence to support that the tenant advised the landlord in advance of February 11, 2016 that she would have two agents at the outgoing condition inspection report. As a result, I find that the condition inspection report as completed is valid and is of significant weight. I have taking into account that the incoming condition inspection report indicates that entry area blind was in good condition and was damaged at the end of the tenancy. Therefore, I find the landlords have met the burden of proof and I grant the landlords **\$105.00** for the cost of the blind repair keeping in mind the landlords are not entitled to more than \$105.00 as that would exceed their total monetary claim of \$2,250.00 as described earlier in this decision.

As the landlords' claim had merit, I grant the landlords the recovery of the cost of the filing fee in the amount of **\$100.00**.

Monetary order – Based on the above, **I find** the landlords have established a total monetary claim as follows:

ITEM DESCRIPTION	AMOUNT GRANTED
Item 1- Loss of January 2016 rent	\$1,350.00
Item 2 – Unpaid utilities	\$411.43*
Item 3 –	3A. \$230.00*
3A. Carpet cleaning : \$230.00*	3B. <u>\$215.00*</u>
3B. Repair in hole in wall and related cleaning: \$215.00*	\$445.00*
3C. Blind repair	<u>3C. \$105.00</u>
	<u>\$550.00</u>
Recovery of the cost of the filing fee	\$100.00
TOTAL AMOUNT OWING BY TENANTS TO LANDLORDS	\$2,411.43

(* via mutually settled agreement between the parties)

As the landlords continue to hold a security deposit of \$675.00 and a pet damage deposit of \$675.00, **I authorize** the landlords to retain the tenants' full security deposit of \$675.00 and full pet damage deposit of \$675.00 in partial satisfaction of the landlords'

monetary claim. I grant the landlords a monetary order pursuant to section 67 of the *Act* in the amount of **\$1,061.43** for the balance owing by the tenants to the landlords.

Conclusion

The landlord's claim is successful.

I order the parties to comply with their mutually settled agreement pursuant to section 63 of the *Act*.

The landlords have established a total monetary claim of \$2,411.43 and have been authorized to retain the tenants' full \$675.00 security deposit and full \$675.00 pet damage deposit in partial satisfaction of the landlords' monetary claim. The landlords are granted a monetary order pursuant to section 67 of the *Act* in the amount of \$1,061.43 for the balance owing by the tenants to the landlords. The tenants must be served with the monetary order which may also be enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: October 17, 2016

Residential Tenancy Branch

