



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNR FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on May 4, 2018 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

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

The Landlord attended the hearing at the appointed date and time, and provided affirmed testimony.

The Landlord testified the Application package and documentary evidence were served on the Tenant by registered mail. The Tenant acknowledged receipt. In addition, the Tenant testified he served the documentary evidence upon which he intended to rely on the Landlord by registered mail. The Landlord acknowledged receipt. No further issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find that these documents were sufficiently served for the purposes of the *Act*.

The parties 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 money owed or compensation for damage or loss?
2. Is the Landlord entitled to a monetary order for unpaid rent?
3. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the fixed-term tenancy began on July 30, 2017, and was expected to continue to August 30, 2018. However, on March 31, 2018, the Tenant provided the Landlord with a hand-written notice of intention to vacate the rental unit on April 30, 2018, although he left on April 20, 2018. During the tenancy, rent in the amount of \$1,375.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$687.00, which the Landlord holds.

The Landlord's monetary claim was summarized with the Application. First, the Landlord claimed \$5,500.00 for unpaid rent from May 1 to August 30, 2018, the remainder of the fixed-term tenancy (\$1,375.00 x 4 months).

Second, the Landlord claimed \$124.00 for the cost to list the unit on Craigslist and at the local university housing site. However, she was unable to find a new tenant until mid-September 2018. The Landlord claimed \$124.00 for the cost of online advertisements from May 1 to August 30, 2018, the remainder of the fixed-term tenancy (\$31.00 x 4 months).

Finally, the Landlord sought to recover the \$100.00 filing fee paid to make the Application.

The Tenant disputed the Landlord's claims. In response, the Tenant testified that he vacated before the end of the fixed term because water would enter the rental unit during heavy rains. In support, the Tenant submitted copies of emails to and from the Landlord dated October 12, 18, 19, and 22, 2018. In an email dated October 12, 2018, the Landlord acknowledged that "sometimes water seeps in to the suite" during heavy rains. She suggested the Tenant mop it up with a towel and use a wet/dry vacuum provided. In the email dated October 22, 2018, the Landlord advised that someone would attend the rental unit on October 26, 2018, to investigate the source of the water.

The Tenant also submitted photographic evidence of water accumulating on the kitchen and living room floor. The Tenant also relied on video evidence taken on January 29, 2018, showing water pooling on the kitchen floor. In an email to the Landlord dated January 29, 2018, the Tenant provided an update and suggesting the water problem “appears to be worse”. The Tenant testified that water pooling occurred on 15-20 occasions during the tenancy.

In addition, the Tenant questioned the Landlord’s inability to re-rent the unit until September 2018. He testified that he was advised during his application for tenancy that the Landlord had received 100 applications at that time. The Tenant acknowledged it was in a very desirable location and the Landlord should not have had any difficulty renting it.

In response to the Tenant’s testimony, the Landlord testified she attended the property within hours of receiving the Tenant’s email. She testified she had a plumber attend on January 30 and twice on January 31, 2018. On those occasions, the plumber found the floor to be dry, although the Landlord testified it continued to rain heavily. The plumber also returned to the unit on April 5, 2018 although the report submitted into evidence does not refer to any possible water ingress.

The Landlord questioned the Tenant’s testimony regarding the presence of water in the rental unit. She testified that the video submitted by the Tenant, referred to above, was taken early in the morning on January 29, 2018. However, the Tenant did not advise of the problem for 13 hours, at which time the Tenant sent an email. In addition, the Landlord suggested the video evidence may have been concocted to support ending the tenancy before the end of the fixed term. The Landlord testified that there were no complaints of water being an issue in the 3 months prior to the incident on January 29, 2018, although there had been heavy rains.

The Landlord also submitted that the Tenant vacated the rental unit because of an out-of-province educational opportunity. She referred to an email from the Tenant, dated January 30, 2018 – the day after the video evidence was taken – in which he stated: “the program directors have made the decision that an internship in [Saskatchewan] would be best for my development and education going forward”. The Tenant asked to be released from his obligations under the tenancy agreement for that reason.

In a subsequent email from the Tenant to the Landlord dated February 6, 2018, the Tenant contemplated whether or not he would return. However, the Tenant stated: “I have enjoyed myself here, the location is excellent...and in a quiet neighbourhood.” The Tenant did not suggest that water in the rental unit was the reason for ending the tenancy.

In a further email from the Tenant to the Landlord dated March 20, 2018, the Tenant requested the return of his rent cheques. The email cites a difficulty paying rent in 2 locations, not concerns about water in the rental unit, as the basis for his request.

Analysis

Based on the affirmed 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.

With respect to the Landlord's claim for \$5,500.00 for unpaid rent, I find the Tenant breached the fixed-term tenancy agreement by vacating the rental unit before the end of the fixed term. I also find there is insufficient evidence before me to conclude the Tenant was entitled to end the fixed-term tenancy due to the Landlord's failure to comply with a material term of the tenancy agreement, pursuant to section 45(3) of the *Act*. Despite concerns about water ingress, the Tenant remained in the rental unit for roughly 2-1/2 months after the incident on January 29, 2018. As a result, I find it is more likely than not that the Tenant elected to end the tenancy early because of an out-of-province educational opportunity, not only because of the water issues. This conclusion is supported by the email evidence. If water ingress was a significant concern to the Tenant, one option available to the Tenant was to make an application to the Residential Tenancy Branch for an order that the issue be addressed.

Further, the Landlord has taken steps to re-rent the unit. However, I find there is insufficient evidence before me to conclude the Landlord took all reasonable steps to re-rent the unit and minimize her losses. Accordingly, I find it is reasonable in the circumstance to grant the Landlord a monetary award of \$2,750.00, which is 2 month's rent under the terms of the tenancy agreement.

With respect to the Landlord's claim for \$124.00 for the cost to place an advertisement to re-rent the unit, and in accordance with my findings above, I find it is reasonable in the circumstances to grant the Landlord a monetary award of \$62.00, which is 2 months of the cost to advertise the rental unit.

Having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it reasonable to order that the Landlord retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$2,225.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$2,750.00
Advertising costs:	\$62.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$687.00)
TOTAL:	\$2,225.00

Conclusion

The Landlord is granted a monetary order in the amount of \$2,225.00. The order 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: November 21, 2018

Residential Tenancy Branch