



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PORTERS HARDWARE LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 0957 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord's agent is the landlord's shareholder.

The agent testified that the landlord served the tenant with the dispute resolution package on 19 November 2014 by registered mail. The landlord used the forwarding address received on 7 November 2014 from the tenant. The landlord provided me with a Canada Post tracking number that showed the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

The agent testified that the landlord served the tenant with its amended application and more evidence on 13 February 2015. The agent testified that this mailing was returned to the landlord as the tenant failed to retrieve it. The landlord provided me with a Canada Post tracking number that confirmed this. The agent testified that he had no knowledge of the tenant moving. Service may not be avoided by refusing to retrieve a

mailing. On the basis of this evidence, I am satisfied that the tenant was deemed served with the amended application and evidence pursuant to sections 88, 89 and 90 of the Act.

Preliminary Issue – Landlord’s Amendment

The landlord amended its application to reduce the total monetary order sought from \$2,813.58 to \$2,382.57. As there is no prejudice to the tenant in allowing this amendment, the amendment is allowed.

The landlord claims for \$2,382.57 on the following basis:

Item	Amount
Unpaid November Use and Occupancy / Loss	\$703.58
Bailiffs	1,233.37
BCSC Filing Fee	120.00
Cleaning	250.00
RTB Filing Fee	50.00
Registered Mail	13.07
Registered Mail	12.55
Total Monetary Order Sought	\$2,382.57

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, damage to the rental unit, and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord’s claim and my findings around it are set out below.

This tenancy began in May 2014. Monthly rent of \$720.00 was due on the first. The rent was later reduced to \$703.58 when a service was removed.

On 1 August 2014, the landlord issued a 1 Month Notice to End Tenancy for Cause. The tenant applied to cancel the notice. On 2 October 2014, the application was heard

before an arbitrator of this Branch. On hearing the evidence of the parties, the previous arbitrator upheld the notice and issued an order of possession in the landlord's favour. The tenant filed for review of this decision. That review was denied.

On 28 October 2014, the tenant requested more time to move. The parties agreed that the tenant would vacate the rental unit on or before 2 November 2014. The tenant refused to leave on that date. On 3 November 2014, the landlord received a writ of possession from the British Columbia Supreme Court. The landlord provided me with a receipt for the filing costs of receiving this writ. The receipt was dated 3 November 2014 and was in the amount of \$120.00.

The tenancy ended on 7 November 2014 when the tenant was removed by court ordered bailiffs. The agent testified that, to the best of his knowledge, the bailiffs did not seize any of the tenant's belongings. The landlord provided me with an invoice for the bailiff services. The receipt is dated 18 November 2014 and sets out a total cost of \$1,233.37.

On 7 November 2014, the tenant sent her forwarding address by email to the landlord.

I was provided copies of the condition move in and condition move out inspection reports. The condition move in report was completed 25 May 2014. The condition move out report was completed 12 November 2014. The tenant's agent acted on her behalf.

The condition move in inspection report is unremarkable. The condition move out inspection note that the rental unit is not cleaned. The tenant's agent has signed the condition move out inspection report indicating that he agreed with the report with the exception that the carpet was cleaned, although there were spots that were not vacuumed.

I was provided with a receipt from a cleaner. The receipt sets out that the cleaner provided 11.5 hours of service. The receipt is in the amount of \$250.00.

The landlord continues to hold the tenant's security deposit in the amount of \$360.00 which was collected at the beginning of this tenancy.

The agent testified that a new tenancy began 1 December 2014.

Analysis

I find that the tenant willfully failed to comply with an order of possession in the landlord's favour issued by this Branch. Pursuant to subsection 57(2) of the Act, a landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules. By failing to comply with a validly issued order of this Branch, the tenant caused the landlord to incur costs associated with obtaining possession of the rental unit.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

The landlord provided evidence that in order to obtain its rightful possession of the rental unit as ordered by this Branch, the landlord incurred costs totalling \$1,353.37. The landlord attempted to mitigate this cost by accommodating the tenant's request to stay a few more days in the hope that she would leave voluntarily. I find that the landlord has proven its entitlement to this amount.

Pursuant to subsection 57(3) a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended. As, pursuant to an order of the Residential Tenancy Branch made 9 December 2014, the tenancy has ended, the landlord is not entitled to "rent" as such; however, the landlord is entitled to compensation from the tenant for her use and occupancy of the rental unit. Further, pursuant to section 67 a landlord is entitled to be compensated for its rental loss. A claim for loss is subject to a duty of mitigation pursuant to section 7(2).

The tenant occupied the rental unit for the first week of November. The landlord is entitled to compensation for this period pursuant to subsection 57(3) of the Act. Over this time the landlord suffered great uncertainty as to when it would receive possession of the rental unit. As such, I find that the earliest possible date for rerenting the rental unit was 1 December 2014. While after the fact, I find that the landlord's rerental for 1

December 2014, is evidence that the landlord did mitigate its rental loss. As such the tenant is liable for the landlord's rental loss for the remainder of November. The landlord has proven its entitlement to \$703.58.

Subsection 32(2) of the Act requires a tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. *Residential Tenancy Policy Guideline*, "1. Landlord & Tenant – Responsibility for Residential Premises" states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. ...

The condition move out inspection report indicates that the rental unit was dirty at the end of the tenancy. The tenant's agent agreed with this characterization with some minor exceptions. The landlord has provided proof that it incurred \$250.00 in costs to clean the rental unit as a result of the tenant's failure to clean the rental unit as required by the Act. The landlord has proven its entitlement to \$250.00 for its cleaning costs.

The landlord has claimed for its costs associated with serving documents in these proceedings. These costs are best characterized as "disbursements" incurred in the course of these proceedings.

Section 72 of the Act allows for repayment of fees for starting dispute resolution proceedings and charged by the Residential Tenancy Branch. While provisions regarding costs are provided for in court proceedings, they are specifically not included in the Act. I conclude that this exclusion is intentional and includes disbursement costs. Furthermore, I find that disbursements are not properly compensable pursuant to section 67 of the Act as the tenant's contravention of the Act is not the proximate cause of the expense.

I find that the landlord is not entitled to compensation for the landlord's disbursement costs as disbursements are not a cost that is compensable under the Act.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,996.95 under the following terms:

Item	Amount
Unpaid November Use and Occupancy / Loss	\$703.58
Bailiffs	1,233.37
BCSC Filing Fee	120.00
Cleaning	250.00
Offset Security Deposit Amount	-360.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,996.95

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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

Dated: July 02, 2015

Residential Tenancy Branch

