



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNR, MNSD, MNDC

Introduction

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

- a monetary order for unpaid rent, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The tenants did not attend this hearing, although I waited until 1345 in order to enable the tenants to connect with this teleconference hearing scheduled for 1330. The landlord SS (the landlord) 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 confirmed that she had authority to act on behalf of the landlord RS.

The landlord testified that the landlords served the tenants with the complete dispute resolution package on 10 June 2015 by registered mail. The landlords provided me with a Canada Post customer receipts that showed the same. The landlord testified that the address used for service was the address provided by both tenants at the end of April as their forwarding address. The landlord testified that the mailings were returned as unclaimed.

Residential Tenancy Policy Guideline, "12. Service Provisions" sets out that service cannot be avoided by failing to retrieve the mailing:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

In accordance with sections 89(1) and 90 of the Act, the tenants were deemed served with the dispute resolution package on 15 June 2015, the fifth day after its mailing.

Prior Application

This tenancy was the subject of earlier cross applications for dispute resolution.

In that hearing the prior arbitrator ended the tenancy pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The prior arbitrator granted an order of possession effective 30 April 2015 and a monetary order in the amount of \$3,271.81. The monetary order (the First Monetary Order) was made on the following basis:

Item	Amount
Rent Arrears and Loss	\$2,575.00
Utility Arrears to March 2015	646.81
Filing Fee	50.00
Total First Monetary Order	\$3,271.81

Issue(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

Background and Evidence

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

This tenancy began 1 October 2014. The parties entered into a written tenancy agreement. Monthly rent of \$1,000.00 was due on the first. The landlord continues to hold the tenants' security deposit in the amount of \$500.00, which was collected at the beginning of the tenancy. Electricity was not included in monthly rent.

The tenants did not vacate the rental unit when served with the order of possession. The landlords filed for a writ of possession in the British Columbia Supreme Court. The landlords engaged the services of a bailiff to remove the tenants from the rental unit. On 7 May 2015, the tenants were removed by the bailiff.

The landlord testified that the tenants left a large volume of debris in the rental unit including furniture and clothing. The landlord testified that disposal of the items cost \$340.00.

The landlords provided a handwritten note dated 30 April 2015. That note sets out that the tenant BS acknowledges that the landlords will retain the tenants' security deposit.

The landlords provided me with a receipt for \$700.00 cash from the landlords dated 7 May 2015 as well as a handwritten note on a direct deposit information form indicating a transfer of

\$1,000.00 on 5 May 2015. The landlords provided me with a bank deposit slip confirming the transfer of \$1,000.00.

The landlords provided me with a receipt dated 7 May 2015 from the municipal sanitation department in the amount of \$340.00.

The landlords provided me with a receipt dated 6 May 2015 in the amount of \$120.00 from the courthouse. The landlord testified that this cost was in respect of the filing fees for the writ of possession. The landlords provided me with a receipt dated 5 May 2015 in the amount of \$1.50 from the courthouse. The landlord could provide information on this expense.

The landlords provided an invoice dated 3 June 2015 in the amount of \$835.77. The invoice is for electric utilities and is addressed to the tenant BS. The invoice includes a previous bill amount of \$646.81. The current period for the invoice was 11 March 2015 to 8 May 2015. The landlord testified that the unpaid amounts have become the landlords' responsibility.

The landlords claim for \$5,997.27. The landlords have itemized the following amounts in their claim:

Item	Amount
Baliff Fees	\$1,700.00
Clean Up	340.00
Court Fees	121.50
Utilities	835.77
Total Monetary Order Sought	\$2,997.27

I understand that the remaining \$3,000.00 relates to the yet unsatisfied First Monetary Order.

Analysis

I find that the tenant willfully failed to comply with an order of possession in the landlords' 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 tenants caused the landlords 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 landlords provided evidence that in order to obtain its rightful possession of the rental unit as ordered by this Branch, the landlords incurred costs of \$1,700.00 for a bailiff, \$120.00 for court fees, and \$1.50 in miscellaneous costs. The tenants, although duly served, did not attend the hearing to provide any evidence or submissions. I find that the landlords have proven its costs of \$1,700.00 for the bailiff and \$120.00 in court fees. The landlord could not identify the source of the \$1.50 cost. I find that landlords are not entitled to this amount. I find that the landlords have proven its entitlement to \$1,820.00.

Subsection 37(2) of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear.

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. ...

Unless there is an agreement to the contrary, the tenant is responsible for removal of garbage and pet waste during, and at the end of the tenancy.

The landlord provided sworn and uncontested testimony that the tenants left a large volume of debris (including furniture) in the rental unit at the end of the tenancy. Leaving debris behind in this manner is a breach of subsection 37(2) of the Act. The landlords have provided a receipt for the disposal of the tenants' debris. The receipt is in the amount of \$340.00. I find that the landlords have proven their entitlement to this amount.

The tenancy agreement provided that electricity was not included in rent. The tenants were responsible for paying for the electricity used at the rental unit. The landlords provided an invoice totaling \$835.77. \$188.96 of this amount is current charges. The remaining \$646.81 relates to an earlier invoice. The landlords have already been awarded an amount \$646.81 for this invoice that is included in the First Monetary Order. I cannot award the landlord this amount again. The landlords have proven their entitlement to \$188.96 in utilities.

The landlords have claimed an additional \$3,000.00 from the yet unsatisfied First Monetary Order. The landlords may not seek a second order including the First Monetary Order amount. The First Monetary Order is a valid order of this Branch and I cannot disturb it. The landlords' claim for \$3,000.00 is dismissed.

The landlords applied to keep the tenants' security deposit. I allow the landlords to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$1,848.96 under the following terms:

Item	Amount
Bailiff Fee	\$1,700.00
Court Fee	120.00
Cleaning	340.00
Utilities	188.96
Less Security Deposit	-500.00
Total Monetary Order	\$1,848.96

The landlords are 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: December 08, 2015

Residential Tenancy Branch

