



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 975510 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, OPB, MNR, MND, MNDC, FF

Introduction

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

- an order of possession for unpaid rent and for breach of an agreement, pursuant to section 55;
- 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*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 40 minutes. The landlord's agent JG ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was an employee of the numbered company named in this application and that she had authority to represent it as an agent at this hearing.

The landlord confirmed that the tenants were each served with a separate copy of the landlord's application for dispute resolution hearing package ("Application") on December 30, 2015, by way of registered mail. The landlord provided two Canada Post tracking numbers verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's Application on January 4, 2016, five days after their registered mailings.

At the outset of the hearing, the landlord confirmed that the tenants had vacated the rental unit, so the landlord's Application for an order of possession was no longer required. Accordingly, these portions of the landlord's Application are dismissed.

Issues to be Decided

Is the landlord entitled to a monetary award 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?

Is the landlord entitled to recover the filing fee for this Application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

The landlord testified that this month-to-month tenancy began on July 18, 2015 and ended on November 21, 2015. Monthly rent in the amount of \$1,600.00 was payable on the first day of each month. A copy of the written tenancy agreement was not provided for this hearing. The landlord seeks a monetary order of \$6,231.88 for unpaid rent, cleaning and repairs to the rental unit. The landlord also seeks to recover the \$100.00 filing fee paid for the Application.

The landlord confirmed that a previous hearing between these parties for this tenancy was held before a different Arbitrator on January 7, 2016, after which a decision and monetary order were issued on the same date. At that hearing, a monetary order for the return of the tenants' security and fob deposits, totalling \$900.00, was made in favour of the tenants. Therefore, the tenants' deposits cannot be offset against the landlord's monetary order at this hearing. The landlord confirmed that the monetary order has not yet been served on the landlord, who has no way of contacting the tenants in order to pay them the above amount.

Analysis

I make the following monetary awards based on the undisputed evidence presented by the landlord at the hearing, as the tenants did not attend or submit any written evidence.

Section 26 of the *Act* requires the tenants to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I award the landlord \$4,800.00 in unpaid rent for September, October and November 2015. The tenants agreed that they did not pay rent for these months, as noted in the decision of the Arbitrator of the previous hearing. The landlord confirmed that the tenants had no entitlement to waive this rent because the work that the tenants were supposed to complete for the landlord was not actually completed. I find that the tenants occupied the unit during the above months and that although they vacated on November 21, 2015, the landlord is entitled to a loss of rent, as rent is due on the first day of each month, and the landlord had to complete repairs after the tenants vacated.

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlord \$411.88 for a saw that the tenants took when they vacated the rental unit. The landlord provided the original receipt for the purchase of the saw on August 12, 2015. The landlord stated that the saw was purchased for the tenants' work use but it was supposed to be returned by the tenants.

I award the landlord \$600.00 for wall repairs, to replace the rental unit door locks and the garage door opener. The landlord provided an estimate for the above amount and a breakdown of the work to be done. The landlord confirmed that the above amount was actually paid for the work done. The landlord claimed that the tenants failed to return the door keys and the garage door opener, so the locks and keys had to be replaced. The landlord also provided coloured photographs of the wall damages which required repair. I find that these areas were beyond reasonable wear and tear and the damage was caused by the tenants.

I dismiss the landlord's claim of \$420.00 for carpet shampoo cleaning. The landlord provided four coloured photographs showing a few minor stains in the carpet. I find that the landlord failed to provide sufficient evidence that the carpet was dirty beyond reasonable wear and tear, as minor stains can be expected during a tenancy. As per Residential Tenancy Policy Guideline 1, tenants are usually only required to steam clean or shampoo the carpets for a tenancy of more than one year, and in this case, it was a tenancy of approximately four months.

As the landlord was mainly successful in this Application, I find that it is entitled to recover the \$100.00 filing fee.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$5,911.88 against the tenants as follows:

Item	Amount
Unpaid Rent for September 2015	\$1,600.00
Unpaid Rent for October 2015	1,600.00
Loss of Rent for November 2015	1,600.00
Saw Replacement	411.88
Wall Repairs, Door Locks, Garage Door Opener	600.00
Recovery of Filing Fee	100.00
Total Monetary Award	\$5,911.88

The landlord is provided with a monetary order in the amount of \$5,911.88 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.

The landlord's Application for an order of possession for unpaid rent and for breach of an agreement, is dismissed without leave to reapply.

I note that the previous hearing monetary order is still in full force and effect and the landlord must abide by it, as I cannot reverse the order or offset it at this hearing.

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 11, 2016

Residential Tenancy Branch

