



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT COMMISSION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MND, MNR, FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- an order of possession for unpaid rent;
- a monetary order for unpaid rent;
- a monetary order for damage to the rental unit; and
- recovery of the filing fee paid for this application from the tenant

The landlord appeared with one witness, S.E., at the teleconference hearing and both gave affirmed testimony. During the hearing the landlord was given a full opportunity to be heard, to present sworn testimony, to call witnesses and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered.

The landlord testified that she sent a copy of the Notice of Hearing, along with the landlord's Application for Dispute Resolution, Amendment to an Application for Dispute Resolution and documentary evidence (collectively referred to as the "dispute resolution hearing package") by registered mail. The landlord testified that she sent the registered mailing to the rental unit on October 5, 2016. The landlord provided a Tracking Number and Canada Post printout showing that the registered mailing was unclaimed and returned to her on October 28, 2016.

Witness, S.E., testified that on October 6, 2016 she personally handed the dispute resolution hearing package to the tenant at the rental unit at 3:30 p.m. Based upon the undisputed testimony of the witness and in accordance with section 89 of the Act, I find

that the tenant has been duly served with the dispute resolution package on October 6, 2016.

Preliminary and Procedural Matters

At the start of the hearing, the landlord withdrew her application for an order of possession for unpaid rent explaining that the tenant moved out of the rental unit on November 8, 2016.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for unpaid rent pursuant to s.67 of the *Act*?
- Is the landlord entitled to a monetary order for damage to the unit pursuant to s.67 of the *Act*?
- Is the landlord entitled to recover the filing fee for this application from the tenant pursuant to Section 72 of the *Act*?

Background and Evidence

The landlord testified that the tenant has resided in the rental unit since April 1, 2006 pursuant to a month to month tenancy agreement signed by the tenant on March 2, 2006. The landlord testified that there have been a number of rent increases since the commencement of the tenancy and that the tenant's rent increased from \$685.00 per month to \$705.00 as of April 1, 2016. The landlord further testified that the rent is due on the first day of each month.

The landlord testified that that as at January 12, 2016 the tenant owed \$1,763.00 in unpaid rent. The landlord provided a copy of a Repayment Agreement signed by the tenant on January 12, 2016 acknowledging the amount owed for unpaid rent, with terms of repayment. The landlord testified that the tenant has since paid \$500.00 leaving a current balance owing of \$1,263.00.

The landlord further testified that the tenant also owes additional unpaid rent as follows:

June 1, 2016	\$500.00
July 1, 2016	\$705.00
August 1, 2016	\$705.00
September 1, 2016	\$705.00
October 1, 2016	\$705.00

Total	\$3,320.00
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The landlord is also seeking a monetary award for the cost of repairing damage to the tenant's bedroom window. The landlord described the damage as a large crack on the interior window pane. The witness, S.E., testified that she noticed that the tenant's bedroom window was cracked on or about the end of May, 2016 when she observed it from outside of the building. The witness testified that it is a double window pane and only the inside pane was damaged and not the exterior which suggested to her that the damage had to have been caused from inside the tenant's rental unit. The witness testified that the tenant said she did not know how the crack was caused. The landlord testified that all the windows in the building had been replaced with new windows in 2005.

The landlord provided a copy of an invoice dated June 9, 2016 for the cost of the repairs that the landlord arranged to have completed. The landlord testified that she is only seeking to recover the amount of the invoice that relates to the tenant's bedroom window as follows:

Labour	\$70.00
Shop supplies	\$10.00
Window pane	\$65.84
Total	\$156.04

The landlords' application sets out an amount of \$5,239.04. However, at the hearing the landlord was only seeking to recover the amount of \$4,839.04, which includes the \$100.00 filing fee.

Analysis

Based upon the undisputed evidence of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant was served with the dispute resolution hearing package and did not attend the hearing, I consider this matter to be unopposed by the tenant. As a result, I find the landlord's application is fully successful as I find the evidence supports the landlord's claim and is reasonable.

I find that the landlord is entitled to receive a monetary award for unpaid rent owing as of January 12, 2016 in the sum of \$1,263.00.

I also find that the tenant was required to pay the monthly rent amount of \$705.00 starting April 1, 2016 and that she failed to do so for the months of July, August, September and October 2016. Accordingly, I find that the landlord is entitled to a monetary award in the amount of \$3,320.00 for unpaid rent for these months.

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 the damages or losses 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*.

Subsection 32(3) of the *Act* requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I find that, on a balance of probabilities, the tenant or a guest of the tenant caused the damage to the bedroom window as the damage was to the interior window pane while the exterior pane remained intact. I also find that the landlord has provided sufficient evidence of the monetary amount for the cost of the repairs and that the amount is reasonable. Accordingly, the landlord is entitled to receive a monetary award in the sum of \$156.04.

I also find that the landlord is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is entitled to a monetary order as follows:

Unpaid Rent as at January 12, 2016.	\$1,263.00
Unpaid Rent for June to October 2016	\$3,320.00
Repairs to Window	\$ 156.04
Recovery of Filing Fee	\$ 100.00
Total Monetary Award	\$4,839.04

The landlord is granted a monetary order in the amount of \$4,839.04 which must be served on the tenant as soon as possible. Should the tenant fail to comply with this monetary order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: November 25, 2016

Residential Tenancy Branch