



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking a monetary order. The hearing was conducted via teleconference and was attended by both landlords and their legal counsel.

The landlord submitted the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on June 3, 2016 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed. Based on the submissions of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

I note the landlords' originally submitted a claim for \$5,395.00 but on November 4, 2016 they submitted an Amendment to an Application for Dispute Resolution form amending their claim to \$13,426.65.

The landlords' legal counsel submitted an affidavit confirming the landlords' evidence and Amendment form was served to the tenant on November 4, 2016. I find the tenant has been served with sufficient notice of the landlords' intention of increasing the amount of their claim.

During the hearing I noted that the landlord had failed to submit a full copy of the invoice for bailiff charges. I determined that this was an administrative error and allowed the landlord to re-submit the full 3 pages of the invoice by fax after the hearing. However, the landlord also did not submit any invoices or receipts in regard to her claim for legal fees in the amount of \$2,042.82. As there was no evidence that these documents had been intended to be a part of the landlords' original evidence package I did not allow the landlord to submit these documents.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; loss of revenue; bank charges; mailing costs; writ of possession enforcement costs; cleaning costs; removal of an abandoned vehicle; legal counsel

fees; mailing costs; Supreme Court costs; the filing fee for a previous Application for Dispute Resolution; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 44, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlords submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on October 26, 2014 for a 1 year fixed term tenancy beginning November 1, 2014 for a monthly rent of \$1,750.00 due on the 1st of each month with a security deposit of \$875.00 paid. The agreement contained a 3 page addendum with 21 additional terms, including clause 11 that stipulates a late payment, returned or non-sufficient funds cheque administration fee of \$45.00 plus any service charges incurred by the landlord from a financial institution for such cheques;
- A copy of page 2 of the above noted tenancy agreement where the parties have initialed hand written changes including that as of November 1, 2015 the tenancy will continue on a month to month basis and the tenant agreed to a rent increase to \$1,795.00 effective November 1, 2015;
- A copy of a Dispute Resolution Decision dated May 31, 2016 written by Arbitrator Kernaghan that issued an order of possession end the tenancy effective two days after service of the order and a monetary order for unpaid rent in the amount of \$1,795.00 for the month of March 2016;
- A copy of a Writ of Possession granted by the Supreme Court of British Columbia on June 8, 2016 ordering the Sheriff to enter the property to cause the landlords to have possession of the unit.

The landlords submitted that the tenant failed to pay rent for the month of March 2016 and they obtained an order of possession and monetary order against the tenant on May 31, 2016. During the time between applying for the orders the tenant also failed to pay rent for the months of April, May and June 2016.

Even after the order of possession was issued the tenant still failed to vacate the property and the landlord was forced to obtain a Writ of Possession that was executed on or about June 13, 2016.

The landlords seek the following compensation:

Description	Amount
Unpaid rent – April, May, and June 2016	\$5,385.00
Lost revenue – July 2016	\$1,795.00
Bank fees for NSF cheques – October 2015, January 2016 (2x), May, June, and July 2016	\$40.00
Filing fee for previous Dispute Resolution Application	\$100.00
Filing fee to obtain Writ of Possession	\$80.00

Bailiff fees and charges	\$2,328.80
Removal of tenant's abandoned vehicle	\$1,050.00
Legal counsel fees	\$2,042.82
Future filing and service fees	\$206.00
Registered mail fees	\$14.32
Cleaning and carpet cleaning	\$404.00
Total	\$13,445.94

In support of the landlords' claim for unpaid rent and bank fees for the months of April, May, and June 2016 the landlords have submitted into evidence copies of cheques and drafts provided by the tenant as payment for rent and bank statements confirming that all were returned by the institution as non-negotiable.

The landlords seek lost revenue for the month of July 2016 in the amount of \$1,795.00, because of the condition the tenant left the rental unit. The landlord submitted that there was a lot of garbage and it had been clear that there had been drug use in the unit. The landlord submitted that they had to hire a cleaning lady, have the carpets cleaned and disinfected. The landlord confirmed they re-rented it for August 1, 2016.

The landlord seeks compensation for cleaning in the amount of \$200.00 and \$204.00 for carpet cleaning. The landlord has provided no documentary evidence to confirm these costs were incurred.

The landlords seek compensation for the filing fee, in the amount of \$100.00, for the previous Application for Dispute Resolution that resulted in the order of possession ending the tenancy. I note that the landlord had originally applied to obtain the order of possession by the Direct Request *ex parte* process. When landlords request orders of possession through the Direct Request process they are not allowed to seek recovery of the filing fee.

While the landlord's Direct Request decision was appeal and set to be heard as a participatory hearing there is no mention in the Decision of May 31, 2016 that the landlord sought to amend their Application to include recovery of the filing fee.

In support of the landlords' claim for the costs of obtaining and executing the Writ of Possession the landlords have submitted the receipts for both the filing fee to obtain the Writ and the bailiff's charges for executing it. I note that the bailiff's report also indicates that the landlord specifically requested that the landlord not remove the tenant's vehicle from the property at the time of enforcement of the Writ.

The landlords explained that when the bailiff indicated that the landlord would be responsible for storage costs of the vehicle she decided to keep the vehicle in the parking stall for the rental unit. However, the landlords received a letter dated August 12, 2016 from their strata council that required they remove it from the property. The landlord submitted that it cost \$1,050.00 to have it removed but did not provide any documentary support to confirm the cost.

The landlords submit that due to the nature of the disputes with this tenant the landlords sought legal counsel and had two bills – one dated April 30, 2016 for \$607.20 and one dated May 31, 2016 for \$1,435.62. As noted above the landlords did not submit any documentary evidence to support these costs being incurred.

The landlords seek \$206.00 for potential future costs for enforcing any orders arising out of this decision. The landlords have provided any evidence to establish what these costs might entail or any confirmation that they can, at this time, confirm they will incur them.

The landlord seeks to recover from the tenant the costs of registered mail in the amount of \$14.32. In support of this part of the claim the landlords have submitted a copy of a receipt from Canada Post.

Analysis

Section 7 of the *Act* states if a party to a tenancy does not comply with the *Act*, regulations or their tenancy agreement, the non-complying party must compensate the other party for any damage or loss that results.

The section goes on to state that the party who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, regulation or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Based on the undisputed documentation and evidence submitted by the landlords I am satisfied that the tenant issued non-negotiable cheques for the payment of rent for each of the months of April, May and June 2016. I find that as a result, the landlords have established they have did not receive payments for those months and incurred administrative fees from financial institutions.

I am also satisfied that the tenancy agreement addendum contained a clause specifically identifying that the landlord would charge and fees incurred as a result of late payment or non-negotiable cheque administration. I find the landlord is entitled to the amounts claimed of \$5,385.00 for rent and \$40.00 for bank fees.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

In regard to the landlords' claims for cleaning and carpet cleaning, I find the landlords have failed to provide any evidence of the condition of the rental unit at the end of the tenancy. However, I find, on a balance of probabilities that after a tenancy of 1½ years that ended by having the tenant physically removed by bailiff it is reasonable to expect that the unit and carpet required cleaning. As a result, I am satisfied the tenant failed to comply with the requirement under Section 37 to leave the unit reasonably cleaned.

Again, the landlords have failed to provide any evidence of the costs to clean the rental unit and the carpets. However, I also find, that the costs of \$200.00 and \$204.00 are reasonable estimates of cleaning and carpet cleaning that had been rented for 1½ years and ending by bailiff. I find the landlord is entitled to \$404.00.

However, as to the landlord's claim for lost revenue for the month of July 2016, I find that in the absence of any direct evidence from the landlord to confirm the condition of the rental unit at the end of the tenancy combined with the fact that the tenant's belongings removed and possession returned to the landlords on June 13, 2016 I find there is insufficient evidence to establish the landlords could not have had the rental unit available for rent to a new tenant for July 1, 2016. I dismiss this portion of the landlords' claim for \$1,795.00.

In regard to the landlords' claim for recovery of the filing fee for the previous decision that ended the tenancy, I find that the landlords made a deliberate choice to forego the filing fee when they pursued the action by Direct Request. In addition, the landlords could have requested an amendment to their Application when the original decision was suspended and a new hearing granted that resulted in the May 31, 2016. Furthermore, I have no authority to grant recovery of a filing fee for a proceeding that was adjudicated by a different Arbitrator. I dismiss the landlords' claim for \$100.00.

Based on the undisputed documentary and testimonial evidence I am satisfied the tenant failed to vacate the rental unit in accordance with the May 31, 2016 order of possession and that as a result the landlord had to apply for a Writ of Possession. I am satisfied that as a result, the landlords incurred a cost of \$80.00 to apply for the Writ. I am also satisfied that the landlords incurred bailiff costs totalling \$2,328.80. I order the landlords are entitled to recover \$2,408.80 from the tenant.

While I accept the landlords' undisputed testimony that they stored the tenant's vehicle in the rental unit parking stall until such time as they were required to remove it by the strata council, the landlords have provided no evidence to establish how much it cost to do so. As such, while the landlords have established they had to remove the vehicle

they have not established that they incurred any costs at all. I dismiss the landlords' claim for \$1,050.00.

In regard to the landlords' claim for fees incurred for seeking legal counsel and for registered mail charges, the *Act* allows a party to be compensated for losses suffered as a result of the other party's violation of the *Act*, regulation or tenancy agreement.

The *Act* does not allow for compensation to a party for choices they make in pursuing actions or claims against the other party. In this case, the landlords made a business choice to seek legal counsel and to serve documents by registered mail. As a result, I find these costs are a cost of doing business and are not recoverable under the *Act*. I dismiss the landlords' claim for \$2,057.14 for these two items.

Likewise, the *Act* does not allow for compensation for potential costs as such, I also dismiss the landlords' claim for \$206.00 in future costs.

Conclusion

I find the landlords are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$8,287.80** comprised of \$5,385.00 rent; \$40.00 administration fees owed; \$404.00 cleaning and carpet cleaning; \$2,408.80 Writ application and enforcement and \$50.00 of the \$100.00 fee paid by the landlords for this application, as they were only partially successful.

This order must be served on the tenant. If the tenant fails to comply with this order the landlords may file the order in the Provincial Court (Small Claims) and be 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 9, 2016

Residential Tenancy Branch