



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on October 27, 2016 (the "Application"). The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities;
- an order allowing the Landlord to keep all or part of the security or pet damage deposit;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing and provided affirmed testimony. The Tenant did not attend the hearing.

The Landlord testified that the Application package, including the Notice of a Dispute Resolution Hearing and the documentary evidence upon which the Landlord intended to rely, was served on the Tenant by registered mail on October 31, 2016. In support, the Landlord submitted a copy of the Canada Post tracking information confirming the package was received on November 3, 2016. Accordingly, I find that the Landlord's Application package was received by the Tenant on that date.

The Landlord C.F. was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

An order of possession with respect to the rental unit was granted to the Landlord on September 13, 2016. An additional order of possession is not required. Therefore, with the Landlord's agreement, I have not considered this aspect of the Landlord's claim further in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the Landlord entitled to an order allowing the Landlord to keep all or part of the security or pet damage deposit?
3. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
4. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted with the Landlord's documentary evidence. It confirms a fixed-term tenancy for the period from March 1 to August 31, 2016. Rent of \$1,275.00 per month was due on the first day of each month. The Landlord was provided with a security deposit of \$637.50.

The Landlord testified that the Tenant did not vacate the rental unit until October 3, 2016, and that expenses were incurred as a result. Accordingly, the Landlord applied to recovery rent for the month of September 2016.

In addition, the Landlord testified with respect to a number of expenses incurred that related to the end of the tenancy, including bailiff/court registry fees (\$120.00), landfill fees (\$36.00), carpet cleaning (\$89.25), repair of damaged blinds (\$30.00), general cleaning (\$60.00), loading and unloading a trailer (\$45.00), use of trailer (\$50.00). These items were summarized on a Monetary Order Worksheet. Receipts were provided for the bailiff/court registry fees, landfill fees, carpet cleaning, and repair of blinds. The Landlord also submitted photographs of the items left behind by the Tenant.

The Landlord also claimed \$1,500.00 for "malicious behaviour" by the Tenant. In written submissions, the Landlord described this behaviour as "numerous verbal and some physical abuse concerning late rent payment... [and] threats to use violence and physical force to remove me from the rental property." However, the Landlord testified the primary concern is recovery of out-of-pocket expenses.

Finally, the Landlord requested recovery of the filing fee, and to apply the security deposit he retains to any monetary award granted.

Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

In this case, the Landlord provided unchallenged oral testimony and documentary evidence in support of this claim. Although duly served with notice of the dispute resolution hearing, the Tenant did not attend to dispute the Landlord's evidence.

Accordingly, I find the Landlord is entitled to a monetary award for unpaid rent in the amount of \$1,275.00.

In addition, I am satisfied the Landlord is entitled to a monetary award of \$430.25 for bailiff/court registry fees, landfill fees, carpet cleaning, repair of damaged blinds, general cleaning and time associated with loading and unloading a trailer.

With respect to the Landlord's claim for "malicious behaviour", I find there is insufficient evidence before me to conclude the Landlord is entitled to the relief sought. Accordingly, this aspect of the Landlord's claim is dismissed.

Having been largely successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application, and to apply the security deposit to the amount of the monetary order.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$1,167.75, which has been calculated as follows:

Claim	Amount
September rent:	\$1,275.00
Bailiff/court registry fees:	\$120.00
Landfill fee:	\$36.00
Carpet cleaning:	\$89.25
Repair blinds:	\$30.00
General cleaning:	\$60.00
Load/unload trailer:	\$45.00
Use of trailer:	\$50.00
Filing fee:	\$100.00
<i>LESS security deposit:</i>	<i>(\$637.50)</i>
TOTAL:	\$1,167.75

Conclusion

I grant the Landlord a monetary order in the amount of \$1,167.75. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 15, 2016

Residential Tenancy Branch