



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MND MNDC MNR MNSD OPC

Introduction

This hearing was convened in response to applications by the landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The application from the corporate landlord requested:

- an Order of Possession for non-payment of rent and utilities pursuant to section 55 of the *Act*;
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent and for money owed for damage or loss under the *Act*;
- authorization to retain the security deposit pursuant to section 72 of the *Act*; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The tenant did not attend this hearing, which lasted approximately 20 minutes. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the 1 Month Notice to End Tenancy for Cause dated March 27, 2017 (the “1 Month Notice”) was served on the same date by giving it to the tenant in person. Additionally, the landlord sent the tenant a copy of the 1 Month Notice by way of Canada Post Registered Mail on March 27, 2017. A copy of the tracking number was provided to the hearing. I find that the tenant was deemed served with the 1 Month Notice in accordance with sections 88 and 90 of the Act on March 27 2017, the same day it was received by her in person.

The landlord testified that the landlord’s application for dispute resolution was sent to the tenant by registered mail on April 11, 2017. The landlord provided a Canada Post tracking number as evidence of service. I find that the tenant was deemed served with the landlord’s application for dispute resolution and evidence package in accordance with sections 89 and 90 of the Act on April 16, 2017, five days after mailing.

At the outset of the hearing the landlord testified that the tenant has vacated the rental unit on May 3, 2017 and withdrew the portion of the application seeking an Order of Possession.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This tenancy began on January 31, 2017. The monthly rent was \$960.00 payable on the first of the month. A security deposit of \$400.00 was paid by the tenant at the start of the tenancy and continues to be held by the landlord.

The landlord testified that the tenant caused a great deal of damage to the rental unit by having smoked inside of it, contrary to the terms of the tenancy agreement. Additionally, the tenant damaged a faucet and failed to pay rent for May 2017, and had an unauthorized guest living in the rental unit for February, March and April 2017.

The application for dispute resolution submitted to the hearing notes that landlord is seeking a Monetary Order of \$1,160.00. This figure differs from the expenses being sought by the landlord in receipts and a ledger submitted to the hearing as part of the evidentiary package. The landlord submitted into written evidence copies of receipts and invoices for the cleaning and repairs undertaken after the tenant vacated the rental unit.

Based on the receipts, monetary order worksheet and evidence submitted to the hearing, the landlord is seeking compensation for the following:

Item	Amount
Cleaning Supplies	\$90.75
Cleaning Labour (7.5 hrs @13.99/hr)	104.92
Replacement of stove top element & Labour @13.99/hr	33.08
Registered Mail	21.21
Odour Products	59.96
Faucet Replacement	93.97
Silicone and Filter for door	30.00
Filing Fee	100.00
Total =	\$533.89

The landlord is also seeking \$1,650.00 for the cost of having an unauthorized person in the suite for three months and \$960.00 in unpaid rent for the month of May 2017.

Finally, the landlord has sought to recover \$400.00 per month for the entire term of the tenancy for 'disturbance' from the smoke odour.

As the tenant over held in the rental unit and then proceeded to vacate the rental unit without notice on May 3, 2017, the tenant failed to participate in a move out condition inspection report at the end of the tenancy.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the landlord's evidence and undisputed testimony that the tenant caused damage to the rental unit that required repairs and cleaning. I accept the landlord's written evidence that the cost of the repairs and cleaning is \$433.89.

The landlord provided undisputed evidence that the tenant provided assurances to the landlord that she would vacate the rental unit at the end of April 2017. The landlord testified that the tenant overheld in the rental unit for three days in May 2017. Pursuant to section 57 of the *Act* a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended. The landlord may therefore recover \$93.00 for the time period that the tenant overheld in the rental unit. This amount is based on a monthly rent of $\$960.00/31 = 31$ per day.

The landlord sought \$1,650.00 for having an unauthorized person in the rental unit. This amount is greater than the Monetary Order served on the tenant. As no amendment was included with the landlord's application for dispute resolution, I cannot consider this amount at this time.

The landlord has also included an application to recover \$400.00 for 'disturbance' from the tenant's smoking. Little evidence or testimony was presented at the hearing concerning this matter and I can therefore not establish how the landlord arrived at this figure. I dismiss this aspect of the landlord's application for a monetary order.

As the landlord's application was successful, the landlord is entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$400.00 in partial satisfaction of the monetary award issued in the landlord's favour.

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to receive a monetary order for unpaid rent for \$226.89. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

Conclusion

I am making a Monetary Order of \$226.86 in favour of the landlord as follows:

Item	Amount
Cleaning Supplies	\$90.75
Cleaning Labour (7.5 hrs @13.99/hr)	104.92
Replacement of stove top element & Labour @ 13.99/hr	33.08
Registered Mail	21.21
Odour Products	59.96
Faucet Replacement	93.97
Silicone and Filter for door	30.00
Filing Fee	100.00
Overholding of May rent	93.00
Less Security Deposit	(-400.00)
Total	226.89

The landlord is provided with formal Orders in the above terms. Should the tenants fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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: May 16, 2017

Residential Tenancy Branch