



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNDC, MNR, FF

Introduction

This hearing was convened in response to an application by the landlord for a Monetary Order for \$25,000.00 under the *Residential Tenancy Act* (the Act) to recover rent arrears, and for damage and loss and inclusive of recovery of the filing fee associated with this application.

Only the landlord appeared in the conference call hearing. I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of hearing, as well the landlord's evidence, by *registered mail* in accordance with Section 89 of the Residential Tenancy Act (the Act) the tenant did not participate in the conference call hearing. The landlord provided evidence of the registered mail service with tracking number indicating the registered mail was not claimed by the tenant.

The landlord was given full opportunity to be heard, to present evidence and to make submissions. The hearing proceeded on the merits of the landlord's application and evidence. I have reviewed all oral, written and document evidence before me. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to the monetary amount claimed for unpaid rent?
Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The following is undisputed. I do not have benefit of a written tenancy agreement

however the landlord testified the tenancy began in, "2010 or 2011". The tenant vacated July 31, 2016. Rent in the amount of \$1500.00 was payable in advance on the first day of each month.

The landlord testified they did not conduct a mutual inspection of the unit at the start of the tenancy and did not complete a mutual move out inspection document (Condition Inspection

Report: CIR) of the unit at the end of the tenancy. The landlord makes the following monetary claims on application.

Unpaid rent for 2012	\$5500.00
Unpaid rent for 2013	\$5000.00
Unpaid rent for 2014	\$3000.00
Unpaid rent for 2016	\$6750.00
Unpaid utilities	\$548.07
cleanup	\$3028.00
Damage repair	\$4823.00
Filing fee	\$100.00

The landlord provided a series of hand written ledgers expressing rent payments 2012 to 2016. The landlord also provided a series of invoices. 1). an invoice for cleaning in the amount of \$75.00. 2). an invoice for labour and dump charges in the amount of \$350.00. 3). an invoice for carpet removal and install, laminate, range hood, baseboards, paint whole house, fix doors, fix bathroom vanity, and all labour in the amount of \$4830.00, for an address unrelated to the dispute address. 4). an "Order Confirmation – this is NOT an invoice" document claimed to be for recycling liquid toxins identified as adhesives, waste oxidizer, and corrosive liquid, in the amount of \$1847.73. It was identified to the landlord that the latter invoice did not contain names or addresses and was not an invoice. The landlord claims the tenant operated a business which utilized the referenced substances; however testified the residence was living accommodations.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

It must be known that the landlord, as applicant, bears the burden of proving their monetary claims pursuant to the Act, on balance of probabilities.

On preponderance of the evidence before me, I find **Section 7** of the Act provides as follows in respect to the landlord's claims herein:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, the landlord must satisfy each component of the test below:

1. *Proof the loss exists,*
2. *Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act or an agreement*
3. *Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.*
4. *Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to minimize the loss or damage.*

The landlord bears the burden of establishing their claims by proving the existence of a loss stemming directly from a breach of the agreement or contravention of the *Act* by the tenant. Once established, the landlord must then provide evidence that can reasonably verify the monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation and to mitigate the losses claimed. If a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs or replacement (less depreciation), whichever is less. The onus is on the landlord to prove expenditure is reasonable under the circumstances.

In respect to the landlord's claim for damages, cleaning and other associated charges, I find that in the absence of a condition inspection report (CIR) the invoice evidence of the landlord does not contain sufficient evidence to associate the state of the rental unit at the end of the tenancy to the items and the amounts claimed. A large purported invoice for \$1847.73 does not contain any association to the tenant, the landlord, or the dispute address. Even if I were to accept this document as an invoice and as a relevant charge, I find the landlord's amount for cleaning is almost \$800.00 more than represented by their evidence. I find the landlord's evidence insufficient to support their claims for damages and cleanup. As a result the landlord's claims for these items of their application must fail and are dismissed.

In respect to the landlord's claim for rent arrears, in the absence of other or additional evidence in support of their claim for arrears of rent for the years of 2012 to 2014 I find the landlord did not act on the claimed unpaid rent of this period until 2 ½ years later. I find that by this conduct the landlord effectively *waived* reliance on the tenant's obligation to satisfy the rent for this period.

The legal doctrine of waiver is the surrender or voluntary relinquishment of a known right or privilege by conduct inferring that a particular right has been relinquished.

As a result, I dismiss the landlord's claim for unpaid rent for the period 2012 to 2014.

I find that the landlord has not provided any evidence to support their claim for utilities and as a result this portion of their application must fail and is dismissed.

On the undisputed evidence of the landlord I find that the tenant did not satisfy a shortfall of rent owed for 2016 in the amount of **\$6750.00**. As a result I grant the landlord this amount.

As the landlord was in part successful in their application they are entitled to recover their filing fee. Calculation for Monetary Order is as follows:

Unpaid rent for 2016	\$6750.00
Filing fee	\$100.00
Monetary award to landlord	\$6850.00

I grant the landlord a **Monetary Order** pursuant to Section 67 of the Act for the amount of **\$6850.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's application in part has been **granted** and the balance **dismissed**.

This Decision is final and binding.

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: October 31, 2017

Residential Tenancy Branch