



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNR, MNDC, FF

Introduction

This hearing was convened in response to an application by the landlord for a Monetary Order under the *Residential Tenancy Act* (the Act) to recover loss of rent revenue and for damage and loss and inclusive of recovery of the filing fee associated with this application, and an order to retain the tenancy deposits in partial satisfaction of the monetary claim.

Only the landlord appeared in the conference call hearing. I accept the landlord's testimony that the tenant was served, with the application for dispute resolution and notice of hearing as well as the landlord's evidence of 24 pages, in accordance with Section 89 of the *Residential Tenancy Act* (the Act). The landlord testified they served the tenant with all of their documents by *registered mail* and by *personal service*. None the less the tenant did not participate in the conference call hearing. The landlord testified they sent to the tenant all of the evidence submitted to this proceeding.

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 in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The following is undisputed. I have benefit of the written tenancy agreement stating the tenancy began January 23, 2017. The tenancy was ordered at an end by an Arbitrator's Decision dated March 30, 2017 and subsequently confirmed on Review by the tenant. The landlord claims that the tenant was involuntarily vacated in mid-May 2017 by a court-appointed bailiff.

Rent in the amount of \$2500.00 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit and a pet damage deposit from the tenant in the sum of \$2500.00 which the landlord retains in trust. The evidence is that the parties did not agree as to the administration of the deposits *at the end of the tenancy*.

The landlord makes the following monetary claims on application as provided in their undated Monetary Order Worksheet.

Rent for April 2017	\$2500.00
Rent for May 2017	\$2500.00
Meter Utility Bill	\$503.32
Bailiff and Supreme court filing	\$2100.00
Damage to property, yard maint & cleanup	\$2800.00

The landlord claims that the tenant damaged the rental unit. The landlord obtained an estimate for \$2800.00 to remedy the unit, however acknowledging they did not submit same or any other evidence in support of their claim for damages.

The landlord claims bailiff and Supreme Court filing fee costs in the amount of \$2100.00. The landlord provided a copy of a Request for Court Bailiff Services completed by the landlord's representative, however acknowledging they did not submit proof of expenditures or any other evidence in support of this claim.

The landlord claims unpaid utilities for the duration of the tenancy. In support of this claim the landlord provided a copy of the tenancy agreement stating the tenant was responsible for utilities, as well as a copy of a Metered Utility Bill in the name of the landlord in the amount of \$955.01 *if paid by the due date*. The landlord's evidence relies on calculations indicating the tenant's responsibility for the utilities as \$503.32 after deductions from the amount of \$1030.51 *if paid after the due date*.

The landlord testified that the tenant did not pay any of the payable rent for the months of April or May 2017, for which they claim the sum of \$5000.00.

Analysis

The full text of the Act, Regulation, and other resources can be accessed via the RTB 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 that I have not been presented with evidence that the tenant had a right under the Act to deduct or withhold rent for and during their occupancy of the rental unit. **Section 26** states that rent must otherwise be paid. As a result I grant the landlord unpaid rent for April and May 2017 in the sum of **\$5000.00**.

Section 7 of the Act provides as follows in respect to the remaining claims of the landlord.

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.*

I find the landlord has not submitted sufficient evidence of a loss incurred due to the claimed damage of the rental unit by the tenant, nor submitted any evidence in support of expenditure for the claimed damage. As a result I must **dismiss** this portion of their claim.

I find the landlord has not submitted sufficient evidence in support of expenditure for bailiff costs or court filing costs. As a result I must **dismiss** this portion of their claim.

I am satisfied by the landlord's evidence the tenant owes the landlord for utilities pursuant to their calculations. I find that the tenant is not responsible for the landlord's choice to pay the Metered Utility Bill *after the due date* and incurring an additional charge \$75.50. As a result, I amend the landlord's calculations and deduct \$75.50 from their claim and grant the landlord **\$427.82** for unpaid utilities.

As the landlord was in part successful in their application they are entitled to recover their filing fee.

The security and pet damage deposits will be offset from the award made herein.

Calculation for Monetary Order is as follows.

Rent for April 2017	\$2500.00
Rent for May 2017	\$2500.00
Unpaid utilities	\$427.82

Filing fee	\$100.00
Landlord's award / total	\$5527.82
<i>Less security and pet damage deposits in trust</i>	<i>- \$2500.00</i>
Monetary Order / landlord	\$3027.82

Conclusion

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

I ORDER the landlord may retain the security and pet damage deposits totalling \$2500.00 in partial satisfaction of their award, and **I grant** the landlord a **Monetary Order** pursuant to Section 67 of the Act for the balance of the award in the amount of **\$3027.82**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

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: November 07, 2017

Residential Tenancy Branch