



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The landlords attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlords stated that the tenant was served with the notice of hearing package twice via Canada Post Registered Mail on September 21, 2017 and as shown by the submitted copy of the Canada Post Customer Tracking labels and the printouts of online tracking for each package. The landlords clarified that the tenant had vacated the rental unit on October 3, 2017 and as a result a second package was sent to the tenant to the new address as per a copy of a receipt from a local pharmacy receipt with the tenant's name and address on it. The landlords' clarified that the address was confirmed by following the tenant to this address when she vacated the premises on October 3, 2017 and that they were aware of the tenant using this address for her primary residence from Mondays to Fridays and that the tenant would only reside at the rental unit on the weekends. The landlords provided photographs of the returned envelopes from Canada Post as "unclaimed" after attempts at service were made. I accept the undisputed evidence of the landlord and find that the landlords have properly served the

tenant with the notice of hearing package via Canada Post Registered Mail on September 21, 2017. Although the tenant failed to claim the packages, I find pursuant to section 90 of the Act that the tenant has been sufficiently served 5 days later on September 26, 2017.

The landlords also provided undisputed affirmed testimony that the two additional documentary evidence package(s) were served to the tenant via Canada Post Registered Mail on March 20, 2018 in the same package in conjunction with the landlord's amendment lowering the monetary claim to \$8,595.87 on March 28, 2018. The landlords have submitted in support of these claims a copy of the Canada Post Customer Receipt, labels and a printout of the online tracking search. I accept the undisputed evidence of the landlords and find that the tenant has been properly served as per section 88 of the Act.

The landlords' request to retain the \$400.00 security deposit as part of a claim for damages is dismissed. It was clarified with both parties that the landlord had applied for permission to retain the \$400.00 security deposit to offset any successful claims made in this application. No details of cleaning or damages were made in this application.

During the hearing it was also clarified with the landlords that the \$200.00 monetary claim for recovery of filing fee(s) was in reference to this application for disputes as well as a previous one where the filing fee was not addressed. The landlords were notified that the recovery of the \$100.00 filing fee for that file would have to be addressed in the form of an application for correction/clarification on that file if a finding was not made on that filing fee.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?

Are the landlords entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlords state that no signed tenancy agreement was made, but that a verbal agreement was made for \$800.00 per month and a \$400.00 security deposit was paid

by the tenant. No condition inspection reports for the move-in or the move-out were completed.

The landlords seek an amended monetary claim of \$8,595.87 which consists of:

\$4,800.00	Unpaid Rent, May – October 2017
\$246.75	Bailiff Services, Writ of Possession
\$2,800.00	Harassment/Loss of Quiet Enjoyment
\$100.00	Filing Fee
\$29.12	New Door Lock
\$120.00	Writ of Possession

The landlords claim that the tenancy ended on October 3, 2018 after the landlords were successful in obtaining a writ of possession as a result of obtaining an order of possession.

The landlords claim that the tenant had made an agreement to end the tenancy as a result of a mutual agreement dated May 2, 2017 (a copy submitted into evidence) where both parties agreed to end the tenancy on July 1, 2017 in exchange for the tenant receiving compensation equal to 2 months free rent (\$1,600.00). The landlords stated that the tenant failed to vacate the rental premises on July 1, 2017 and did not pay any rent from May 2017 until she vacated the premises on October 3, 2018 (6 months). The landlords seek \$4,800.00 in unpaid rent for the 6 month period at \$800.00 per month. The landlords have also submitted in support of this claim copies of two e-transfer payments dated February 27, 2017 and March 29, 2017 for \$800.00 on each occasion as well as bank confirmation letter dated July 25, 2017.

The landlords claim that a writ of possession was obtained and Bailiff Services were retained after the tenant failed to comply with the order of possession granted on September 19, 2017 (a copy submitted into evidence). The landlord has provided a copy of the order of possession, the receipt for the landlords' application in the Supreme Court of British Columbia for a writ of possession and a copy of the receipt/invoice for Bailiff Services.

The landlords claim that the tenant harassed the landlords after the tenancy ended on October 3, 2017 and seek compensation of \$2,800.00 which is equal to 3 ½ months' rent. The landlords stated that although this was an arbitrary amount it would be very hard to quantify how they calculated the request for compensation. The landlords base this calculation on the 3 ½ months duration (October 2017 to January 2018) after the

tenancy ended until their lives were “back to normal”. The landlords seek this claim because of the tenant’s actions based in part on the 12 pages of text messages submitted. The landlords indicated that they have marked the relevant portions by circling those sections of the text messages. The landlords claim that they have had to suffer through the verbal abuse and harassment of the tenant. The landlords have submitted in support of their claims copies of a receipt for Psychological consultation for the landlord, A.W. dated August 10, 2017; August 15, 2017; a receipt for prescription drugs dated July 26, 2017.

The landlords also seek recovery of \$29.12 for the cost of a new door lock. The landlords claim that at the end of tenancy, the tenant failed to return 1 door lock key and that the landlords needed to replace the lock because of this. The landlords have submitted a copy of a door lock receipt for \$29.12 dated October 5, 2017.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* 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.

In this application, I accept the undisputed affirmed evidence of the landlord and find on a balance of probabilities that a claim has been established for the following listed items for a total claim of \$5,795.87.

\$4,800.00	Unpaid Rent, May – October 2017
\$246.75	Bailiff Services, Writ of Possession
\$100.00	Filing Fee
\$29.12	New Door Lock
\$120.00	Writ of Possession

The landlords have provided undisputed evidence regarding unpaid rent, bailiff services, a writ of possession application fee and the replacement of a new door lock as the tenant failed to return a key to the rental unit. However, the landlords have requested compensation of \$2,800.00 equal to 3 ½ months’ rent which was admitted by the

landlord, A.W. to be an arbitrary amount as it was for the period of time between October 2017 to January 2018 for compensation as a result of harassment and the loss of quiet enjoyment caused by the tenant. I note that the documentary evidence in support of this claim provided refer to receipts dated July 26, 2017 to August 15, 2017. I also note that the landlord was unable to provide sufficient evidence to satisfy me of a loss of quiet enjoyment/harassment by the tenant. The text messages provided by the landlords provide no clear details of harassment and the landlords have failed to provide sufficient evidence to satisfy me that this was attributed to the actions of the tenant. On this basis, this portion of the landlords' claim is dismissed.

The landlords have established a total monetary claim of \$5,795.87. The landlord having been substantially successful in this application is entitled to recovery of the \$100.00 filing fee. I authorize the landlords to retain the \$400.00 security deposit in partial satisfaction of this claim.

Conclusion

The landlords are granted a monetary order for \$5,495.87.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court and 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: April 19, 2018

Residential Tenancy Branch