



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SAANICH PENINSULA REALTY LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNR OPR FF

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 landlord requested:

- an Order of Possession for non-payment of rent and utilities pursuant to section 46 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*; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

Only agent for the landlord, J.R. (the “landlord”) participated in the conference call hearing. J.R. confirmed that he had full authority to speak on behalf of, and make decisions for the landlord. J.R. was given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The landlord testified that a 10 Day Notice to End Tenancy for Non-Payment of Rent and Utilities (“10 Day Notice”) was posted on the tenant’s door on March 2, 2018. Pursuant to sections 88 and 90 of the *Act*, I find the tenant was deemed served with the notice on March 5, 2018, three days after its posting.

The landlord explained that he sent two copies of his application for dispute resolution to the tenant. The first copy, sent by way of Canada Post Registered Mail on March 9, 2018 contained his original application for dispute and his evidentiary package. On May 3, 2018, the landlord sent the tenant an amendment to his application. This amendment was also sent by way of Canada Post Registered Mail. Canada Post tracking numbers

were provided to the hearing for both documents. Pursuant to sections 88, 89 and 90 of the *Act* the tenant is deemed to have been served with these documents on March 14, 2018 and May 8, 2018, five days after their respective postings.

Following opening remarks, the landlord said that he was no longer seeking an Order of Possession as the tenant had vacated the rental unit "at some point in the first week of March." The landlord said that the tenant had abandoned the unit without any warning.

Issue(s) to be Decided

Can the landlord recover a monetary award from the tenant?

Is the landlord entitled to a return of the filing fee from the tenant?

Background and Evidence

Undisputed testimony provided to the hearing by the landlord explained that this tenancy began on May 1, 2015. Rent was \$1,140.70 and a security deposit of \$550.00 collected at the outset of the tenancy, continues to be held by the landlord.

The landlord said that the tenant had failed to pay rent for February and March 2018 and had abandoned the rental unit after the issuance of a 10 Day Notice on March 2, 2018. In addition to an application for unpaid rent, the landlord is seeking a monetary award for damage that was done to the rental unit, along with costs he incurred related to cleaning of the suite. Specifically, the landlord said that the tenant had destroyed the walls, requiring them to be re-painted. The landlord said that the walls were last painted in February 2015. The landlord continued by describing large amounts of debris were left. As part of his evidentiary package the landlord included numerous photos.

The landlord seeks a monetary award as follows:

- Unpaid rent - \$2,281.40
- Canada Post Receipts - \$15.56
- Dump Fees - \$70.50
- Return of Filing Fee - \$100.00
- Labour for Clean Up - \$290.00
- Painting required - \$1,449.20
- Materials for repair to unit - \$33.01 = \$4,239.67

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 case, the onus is on the landlord to prove his entitlement to a claim for a monetary award.

The landlord sought a monetary order of \$4,239.67, which was the amount in unpaid rent for February and March 2018, along with costs he incurred related to repairs and garbage removal that were required in the suite following the tenant's departure.

I find the evidence provided by the landlord to be persuasive and found the landlord to be a credible witness. The landlord's evidentiary package contained numerous receipts for the expenses he incurred, and no evidence or testimony was presented by the tenant to rebut any of the landlord's allegations. I find that the landlord has demonstrated on a balance of probabilities that he suffered a loss as a result of this tenancy and I allow him to recover the amounts sought for unpaid rent, labour, garbage removal and dump fees.

I must consider the landlord's application for a return of the money related to re-painting the suite in light of *Residential Tenancy Policy Guideline #40* which provides a guideline for useful life of items contained in a rental unit. The *Guideline* notes that the useful life for paint is 4 years, or 48 months. The landlord said that the rental unit was last painted in February of 2015, it was therefore 37 months into its useful life at the time it was repainted. I will therefore allow the landlord to recover a monetary award related to the final 11 months of the useful life of the paint, or in this case \$332.10 ($\$1,449.20/48 \text{ months} = 30.19/\text{month}$).

As the landlord was successful in his application, he may recover the \$100.00 filing fee from the tenant. Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction for the monetary award issued.

The landlord has no recourse under the *Act* to recover the Canada Post expenses.

Conclusion

I am making a Monetary Order of \$2,557.01 in favour of the landlord as follows:

Item	Amount
Unpaid rent for February and March 2018	\$2,281.40
Dumb Fee	70.50
Labour for Clean Up	290.00
Painting in Rental Unit	332.10
Recovery of Filing Fee	100.00
Materials for Repairs	33.01
Less Security Deposit	(-550.00)
Total Monetary Award	\$2,557.01

The landlord is provided with formal Orders in the above terms. 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.

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 17, 2018

Residential Tenancy Branch