



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT RPP MNRL-S

Introduction

This hearing was scheduled to be heard by an Arbitrator with the *Residential Tenancy Branch* to consider the following applications:

The landlord applied for:

- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent and utilities; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenant applied for:

- a Monetary Order pursuant to section 67 of the *Act* for loss and damage; and
- return of her personal property pursuant to section 65 of the *Act*.

Both the tenant and the landlord attended the hearing. Both parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was assisted by her agent/translator N.O.

Both parties confirmed receipt of each other's applications for dispute resolution and evidentiary packages. Both parties are found to have been duly served in accordance with the *Act*.

Preliminary Issue – Tenant's Application

The tenant stated at the outset of the hearing that she wished to withdraw her application. She stated that the monetary application that she is seeking may fall beyond the scope of the *Residential Tenancy Branch* and may be considered a matter for the *British Columbia Supreme Court*. I explained to the tenant that withdrawing her

applications would conclude the portion of the hearing related to her matter, and the applications would be dismissed with leave to reapply. The tenant stated she understood this and wished to proceed with the withdrawal of portions of her application.

Issue(s) to be Decided

Is the landlord entitled to a monetary award?

Can the landlord recover the filing fee?

Background and Evidence

The landlord explained that this tenancy began on May 1, 2017 and ended on March 15, 2018 after the landlord was granted a two-day Order of Possession by an Adjudicator with the *Residential Tenancy Branch*. Rent was \$2,100.00 per month, and a security deposit of \$1,050.00 paid at the outset of the tenancy continues to be held by the landlord.

The landlord said she was seeking a monetary award of \$15,000.00 for unpaid rent along with expenses she has incurred related to cleaning and repairs to the rental unit, storage of the tenant's items following the conclusion of the tenancy and overholding in the rental unit.

On March 5, 2018 the landlord was provided with an Order of Possession and a Monetary Award after having succeeded in her Direct Request Proceedings with the *Residential Tenancy Branch*. The landlord said that the two-day Order of Possession was served on the tenant the same day it was issued; however, the tenant did not vacate the suite until March 15, 2018.

When asked to clarify the difference between the monetary application for \$15,000.00 and the monetary order worksheet submitted as part of the landlord's application package showing a figure of \$10,163.33 the landlord said that she was still gathering receipts and other evidence in support of her claim.

Analysis

Section 57 of the *Act* describes an “overholding tenant” as a tenant who continues to occupy a rental unit after the tenancy is ended. In this case, the landlord argued that the tenancy ended on March 7, 2018, two days after the tenant was served with a two-day Order of Possession. The landlord explained that the tenant remained in the home until March 15, 2018.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, 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 her entitlement to a claim for a monetary award.

I find that the tenant overheld in the rental unit following the service of the Order providing her with two days to vacate the rental unit. I find that the landlord has proven the existence of loss stemming directly from a contravention of the *Act* on the part of the tenant and I find that the landlord is therefore entitled to recover unpaid rent of \$2,100.00 for March 2018.

After carefully reviewing the landlord’s application for dispute, I find that the landlord has failed to serve the tenant with an application related to any other monetary relief, other than one to recover unpaid rent and to withhold the security deposit. *Rule 2.2* of the *Residential Tenancy Branch’s Rules of Procedure* states, “The claim is limited to what is stated in the application” while *Rule 6.2* notes, “the hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. The arbitrator may refuse to consider unrelated issues.”

While the application before me today was related to an application for a monetary award, I find that the landlord did not seek to amend her application for monetary award related to the other items listed on her monetary order worksheet and could not sufficiently explain to me how the issue of overholding related to her application for matters related to a loss of a trampoline and other items. I therefore dismiss the remainder of the landlord’s application with leave to reapply.

As the landlord was successful in her application, she may recover the \$100.00 filing fee from the tenant. Using the offsetting provisions contained in section 72 of the *Act*,

the landlord may withhold the tenant's security deposit in partial satisfaction for a return of the monetary award.

Conclusion

I issue a Monetary Order of \$1,150.00 in favour of the landlord as follows:

ITEM	AMOUNT
Unpaid Rent for March 2018	\$2,100.00
Return of Filing Fee	100.00
Less Security Deposit	(-1,050.00)
TOTAL =	\$1,150.00

The landlord is provided with a Monetary Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this 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: July 20, 2018

Residential Tenancy Branch