



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 102009735 SASKATCHEWAN LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL, MNDL, MNRL, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord requested monetary compensation for unpaid rent and utilities as well as reimbursement for the cost of repairs and cleaning of the rental unit, obtaining and enforcing a Writ of Possession in the B.C. Supreme Court and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on August 9, 2018. Only the Landlord's agent, R.S., called into the hearing (R.S. was noted as agent at the time of filing the Application; he also advised that he and his father own the company which in turn owns the rental unit; as such, and for the purposes of this my Decision, I refer to R.S. as the "Landlord"). The Landlord gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 2:06 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

As the Tenant did not call in, service of the Landlord's hearing package was considered. The Landlord testified that on January 10, 2018 he served the Tenant by registered mail sent to the address of a home for which she is the registered owner as well as to which she had her mail forwarded. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. The Landlord testified that the package was returned with the notation that it had been refused.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of January 15, 2018 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord recover the filing fee?

Background and Evidence

This tenancy began July 1, 2017. The Tenant paid rent in the amount of \$1,400.00 due on the first of each month.

Due to nonpayment of rent the Landlord issued a 10 Day Notice to End Tenancy on August 21, 2017. By Decision dated September 12, 2017, the Landlord obtained a Monetary Order and Order of Possession. The Landlord testified that he was forced to obtain a Writ of Possession as well as the services of a Bailiff to remove the Tenant. The Tenant vacated the rental unit on September 26, 2017.

The Landlord testified that the prior to the tenancy beginning the rental unit underwent \$10,000.00 in renovations and upgrades such that it was essentially new. He stated that when the tenancy ended the rental unit was left unclean and damaged such that he incurred considerable expenses repairing and cleaning the unit. Photos of the rental

unit submitted by the Landlord confirm his testimony in this regard. The Landlord also provided copies of invoices and receipts to support his claim for compensation.

In the hearing before me the Landlord sought compensation for unpaid rent in the amount of \$1,400.00 for the month of September 2017.

He also sought compensation for unpaid utilities based on the terms of the tenancy agreement which provided the Tenant was responsible for her own utilities. A copy of the tenancy agreement confirmed this.

The Landlord also requested compensation for the amounts incurred to repair and clean the rental unit as well as obtain and enforce the Writ of Possession in the B.C. Supreme Court.

The amounts sought by the Landlord included compensation for the following:

Unpaid rent for September 2017	\$1,400.00
Unpaid utilities	\$168.36
Cost to clean and repair rental unit	\$500.00
Cost to repair drywall	\$100.00
Cost to replace garage door opener and reconfigure garage door	\$91.35
Cleaning supplies paid for by Landlord for use by cleaners	\$43.00
Cost to obtain Writ of Possession in B.C. Supreme Court	\$120.00
Cost of Bailiff to enforce Writ of Possession	\$1,013.85
Cost to remove Tenant's garbage	\$14.75
Registered mail costs	\$35.21
Recovery of RTB filing fee	\$100.00
TOTAL CLAIMED	\$3,586.52

Analysis

After consideration of the undisputed testimony and evidence before me, and on a balance of probabilities I find the following.

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
 - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

Landlord and tenant obligations to repair and maintain

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

The Tenant failed to vacate the rental unit as required by the Order of Possession; as she over-held her tenancy the Landlord is entitled to recover loss of rent for September 2017. Further, as the Tenant failed to vacate the rental unit as required, the Landlord is entitled to the amounts claimed to obtain and enforce the Writ of Possession in the B.C. Supreme Court.

I also accept the Landlord's evidence that the tenant failed to pay the utilities as required by the tenancy agreement; the Landlord is therefore entitled to recover the amount of the unpaid utilities.

The photos confirm the Tenant failed to clean and repair the rental unit as required by sections 32 and 37 of the *Act*. I am persuaded by the copies of receipts and invoices provided in evidence which confirmed the amounts they paid to repair and clean the unit and I award them related compensation. I also award the Landlord the cost to remove the Tenant's garbage.

Registered mail costs are not recoverable under the *Act* and I therefore dismiss the Landlord's request for related compensation.

As the Landlord has been substantially successful he is entitled to recovery of the \$100.00 fee paid to file his Application for Dispute Resolution.

Conclusion

The Landlord is entitled to monetary compensation in the amount of **\$3,551.31** calculated as follows:

Unpaid rent for September 2017	\$1,400.00
Unpaid utilities	\$168.36
Cost to clean and repair rental unit	\$500.00
Cost to repair drywall	\$100.00
Cost to replace garage door opener and reconfigure garage door	\$91.35
Cleaning supplies paid for by Landlord for use by	\$43.00

cleaners	
Cost to obtain Writ of Possession in B.C. Supreme Court	\$120.00
Cost of Bailiff to enforce Writ of Possession	\$1,013.85
Cost to remove Tenant's garbage	\$14.75
Recovery of RTB filing fee	\$100.00
TOTAL AWARDED	\$3,551.31

The Landlord is granted a Monetary Order in the amount of \$3,551.31. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: August 09, 2018

Residential Tenancy Branch