



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT COMMISSION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL, MNRL, FFL

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 damage to the unit pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:12 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord gave sworn testimony that a copy of the dispute resolution hearing package and written evidence package were sent to the tenant by registered mail at the address where the tenant was then residing on September 18, 2018. The landlord gave the Canada Post Tracking Number to confirm this registered mailing and testified that this material was returned to the landlord as unclaimed on October 12, 2018. Based on the undisputed sworn testimony of the landlord, I find that the tenant was deemed served with these packages on September 23, 2018 in accordance with sections 88, 89 and 90 of the Act.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy for this rent geared to income rental unit commenced on March 1, 2009. The landlord testified that the tenant's portion of the monthly rent has remained at \$596.00 throughout the duration of this tenancy.

The landlord's original application for a monetary award of \$2,598.49 included requests for the recovery of unpaid rent of \$596.00 for August and September 2018, plus the recovery of the possible loss of income of \$596.00 for each of October and November 2018. The landlord's original application also included a request for \$383.25 in damage to the toilet in this rental unit and \$180.00 for the cleanup of the yard and yard maintenance.

At the hearing, the landlord reduced the requested amount of the monetary award to \$1,540.49. This amount reflected the following:

Item	Amount
Unpaid August 2018 Rent	\$596.00
Unpaid September 2018 Rent	596.00
Tenant's Portion of Repair to Damaged Toilet	32.49
Tenant's Portion of Yard Cleanup and Maintenance	180.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Award Requested	\$1,504.49

The landlord gave undisputed sworn testimony that no rent was paid by the tenant for either August or September 2018. The landlord provided sworn testimony and written evidence that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was sent to the tenant on September 13, 2018 for unpaid rent of \$1,092.00. The landlord said that no rental payments were received from the tenant for these months. The landlord testified that the tenant had vacated the rental unit by October 2, 2018, when the landlord attended the rental unit that day.

The landlord testified that the tenant paid some of the \$57.50 charged to the tenant for the repair of the toilet in the rental unit. This amount was for one-half hour of labour in undertaking toilet repairs. The landlord said that the remaining amount owed by the tenant for the repair of the toilet was \$32.49.

The landlord gave undisputed sworn testimony and written evidence that the yard needed to be cleaned and maintenance provided. The landlord testified that the tenant's portion of these expenses was \$180.00.

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.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 26(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.”

In this case, there is undisputed sworn testimony supported by written evidence that the tenant failed to pay \$596.00 in rent for the months of August and September 2018, the last two months of this tenancy. On this basis, I allow the landlord's application for a monetary award to recover this unpaid rent.

With respect to the landlord's claim for damage arising out of this tenancy, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Based on the undisputed sworn testimony, written and photographic evidence, I find that the landlord has demonstrated entitlement to a monetary award of \$32.49 for damage to the toilet in this rental unit and for \$180.00 for yard cleanup and maintenance.

As the landlord has been successful in this application, I allow the landlord's application to recover the \$100.00 filing fee from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour in the amount of \$1,504.49 under the following terms, an amount which enables the landlord to recover unpaid rent and the filing fee for this application, and to compensate the landlord for damage incurred during the course of this tenancy that exceeded reasonable wear and tear:

Item	Amount
Unpaid August 2018 Rent	\$596.00
Unpaid September 2018 Rent	596.00
Tenant's Portion of Repair to Damaged Toilet	32.49
Tenant's Portion of Yard Cleanup and Maintenance	180.00
Recovery of Filing Fee for this Application	100.00

Total Monetary Order	\$1,504.49
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The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: October 29, 2018

Residential Tenancy Branch