



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ADVENT REAL ESTATE SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenants: CNR, FFT

Landlord: OPR, MNRL-S, MNDL-S

Introduction

On September 14, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to cancel a 10-day Notice to End Tenancy for unpaid rent, dated September 8, 2018 and to be compensated for the cost of the filing fee.

On September 19, 2018, the Landlord submitted an Application for Dispute Resolution under the Act. The Landlord requested an Order of Possession for unpaid rent, a Monetary Order to recover the unpaid rent, a Monetary Order for damages to the rental unit and to be compensated for the cost of the filing fee. The Landlord's Application was crossed with the Tenant's Application and the matter was set for a participatory hearing via conference call.

The Landlord attended the conference call hearing; however, the Tenants did not attend at any time during the 35-minute hearing. The Landlord testified that he attempted to serve the Tenants with the Notice of Hearing by sending it via registered mail on September 20, 2018. Although the Landlord stated that the package was never picked up by the Tenant, the Canada Post website confirmed that a notice card was left at the Tenants' rental unit on September 21, 2018. I find that the Tenants have been duly served with the Notice of Hearing in accordance with Section 89 the Act. Furthermore, the Tenants were also notified of this hearing date as they were emailed the Notice of Hearing by the Residential Tenancy Branch, as a result of their own Application, on September 18, 2018.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenants did not call into the conference, the hearing was conducted in their absence and the Applications were considered along with the affirmed testimony and evidence as presented by the Landlord.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

As the Tenants failed to attend this hearing, I find that they have abandoned their Application and as a result, I dismiss the Tenants' Application without leave to reapply.

The Landlord testified that he learned the Tenants abandoned the rental unit sometime around September 22, 2018. In early October 2018, the Landlord confirmed that the Tenants were no longer living in the rental unit and therefore, took possession of the unit, cleaned it and re-rented it for October 19, 2018. The Landlord no longer requires an Order of Possession and has withdrawn this part of his claim.

The Landlord made a claim for damages in relation to a plumbing issue that occurred while the Tenants were still living in the rental unit and as part of his first Application for Dispute Resolution. The Landlord stated that he amended his Application on October 12, 2018, making a further claim for damages to the rental unit in regard to the condition of the unit after the Tenants moved out. The Landlord acknowledged that he did not have a forwarding address for the Tenants and therefore, could not serve them the amendment or the related evidence. When I learned that the Tenants had not been made aware of the Landlord's claim for damages to the rental unit, I interrupted the Landlord's testimony and did not hear any further evidence in relation to this part of his claim.

I dismiss, with leave to reapply, the Landlord's amendment to his Application where he claimed damages to the rental unit by the Tenants.

In accordance with Section 64(3) of the Act, I have amended the Landlord's Application by accepting that the Landlord has withdrawn his request for an Order of Possession and dismissing, with leave to reapply, the Landlord's amendment related to a claim for damages to the rental unit.

Issues to be Decided

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with Section 67 of the Act?

Should the Landlord receive a Monetary Order for damages in relation to the plumbing repairs, in accordance with Section 67 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

The Landlord provided the following undisputed testimony:

The six-month, fixed term tenancy began on June 1, 2018, and the Tenants agreed to pay \$2,150.00 in monthly rent. The Landlord collected a security deposit and a pet damage deposit in the amount of \$1,075.00 each. The Landlord currently holds both deposits. The Landlord submitted a copy of the Tenancy Agreement that is signed and initialled by the Tenants.

The Landlord stated that the Tenants failed to pay their rent on September 1, 2018. On September 8, 2018, the Landlord posted a 10-Day Notice to End Tenancy for Unpaid Rent, dated September 8, 2018 (the "Notice"), on the Tenants' front door. The Notice had a move-out date of September 18, 2018. The Landlord provided a copy of the Notice and a Proof of Service.

The Landlord testified that the Tenants did not pay their September 2018 rent and did not provide vacant possession of the rental unit on September 18, 2018; therefore, the Landlord applied for an Order of Possession on September 19, 2018.

The Property Manager received second-hand information that the Tenants may have moved out of the rental unit on September 22, 2018. The Property Manager waited until the Landlord returned from his travels in early October 2018, before it was confirmed that the Tenants had abandoned their rental unit.

The Landlord stated that the rental unit was left in a condition that was unrentable. After extensive clean up and repair, the Landlord found new tenants for October 19, 2018.

The Landlord is claiming a loss of rent for September and October 2018.

The Landlord, in his original Application, also claimed a loss for damages as a result of the Tenants clogging the toilet. The Landlord stated that in early September 2018, the Tenants called in a panic about their toilet backing up. The Landlord coordinated a certified plumber and submitted an invoice that indicated a large clump of waste had built up in the drain and had to be professionally cleared. The invoice included costs for labour, a camera, an auger and a hydrojet for a total cost of \$718.20. The Landlord stated that the Tenants had been using the toilet since June without any issues; therefore, is asking compensation for the repair as the backing up of the toilet would have been as a result of the Tenants' actions.

The Landlord began to speak to the losses incurred as a result of the poor condition the rental unit was left in, after the Tenants vacated; however, the Landlord was advised that they may choose to pursue a monetary claim regarding these losses in a separate Application.

The Landlord is asking to be compensated for two months of unpaid rent for a total of \$4,300.00 and to be compensated for the plumbing bill of \$718.20.

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 the responsible 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 Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Based on undisputed evidence, I find that the Tenants entered into a tenancy agreement with the Landlord that required the Tenants to pay monthly rent of \$2,150.00 by the first day of each month and that the Tenants did not paid rent from September 1, 2018 through to October 18, 2018 (when the new tenants moved in). As the Tenants are required to pay rent pursuant to Section 26(1) of the Act, I find that the Landlord has established a monetary claim in the amount of \$3,398.30 in outstanding rent (Loss of September rent of \$2,150 + \$1,248.30 for the 18 days of lost October rent).

Based on the undisputed evidence, I find that the Tenants were using their toilet without any issue since the beginning of the tenancy on June 1, 2018. The Landlord presented evidence that the toilet was backed up in early September of 2018 and that it required a professional plumber to attend and service the toilet and related plumbing. I find that Landlord has incurred a loss as a result of the Tenants' actions and has established a monetary claim in the amount of \$718.20, the cost of the plumbing repair.

I find that the Landlord's claim has merit and they should be reimbursed for the cost of the filing fee, in the amount of \$100.00.

The Landlord has established a monetary claim in the amount of \$4,216.50, which includes \$3,398.30 for unpaid rent, \$718.20 for the plumbing repair and the \$100.00 in compensation for the Filing Fee for this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenants' security and pet damage deposits of \$2,150.00, in partial satisfaction of the monetary claim.

Item	Amount
Unpaid September 2018 Rent	\$2,150.00
Unpaid rent from October 1-18, 2018	1,248.30
Plumbing Repair	718.20
Less security deposit and pet damage deposit	-2,150.00

Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$2,066.50

Based on these determinations, I grant the Landlord a Monetary Order for \$2,066.50, in accordance with Section 67 of the Act.

Conclusion

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$2,066.50. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims 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: October 31, 2018

Residential Tenancy Branch