



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNDCL, MNRL, FFL

Introduction

On June 30, 2018, the Landlords submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for unpaid rent and damages, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlords attended the conference call hearing; however, the Tenant did not attend at any time during the 47-minute hearing. The Landlords testified that they attempted to serve the Tenant with the Notice of Hearing by sending it via registered mail on July 6, 2018. The address the Landlords sent the package is the same address that the Tenant provided as his forwarding address and confirmed during a previous Residential Tenancy Branch hearing, dated June 18, 2018. The Landlords stated that Canada Post left a notice card at the Tenant’s address on July 9, 2018; however, the package was not claimed. The Landlords stated that they also sent a copy of the Notice of Hearing to the Tenant via email; the same email that they had been actively corresponding with the Tenant throughout May 2018. I find that the Tenant is deemed to have received the Notice of Hearing on July 11, 2018, in accordance with Sections 89 and 90 of the Act.

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 Tenant did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the affirmed testimony and evidence as presented by the Landlords.

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.

Issues to be Decided

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

Should the Landlords receive a Monetary Order for damages to the rental unit, in accordance with Section 67 of the Act?

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

Background and Evidence

The Landlords provided the following undisputed testimony:

The one-year, fixed term tenancy began when the Tenant moved into the rental unit on February 19, 2018. The monthly rent was \$1,690.00 and was due on the first of each month. The security deposit was established at \$845.00; however, the Tenant failed to pay the security deposit. Although the Tenant agreed to move out, as a result of a Settlement Agreement, on May 28, 2018, the Tenant did not, and the Landlords were forced to obtain a Writ of Possession and the Tenant subsequently moved out on May 30, 2018. The Tenancy Agreement was signed by the Tenant.

The Landlords testified that the Tenant failed to pay his full rent in March 2018 by the amount of \$80.00. The Tenant did not pay rent for April or May 2018 and the Landlords are claiming a monetary loss of \$3,460.00.

The Landlords stated that the Tenant refused them entry into the rental unit and threatened to call the RCMP when the Landlords attempted to show the rental unit during May 2018. The Landlords submitted emails to demonstrate the Tenant's state of mind and refusal to cooperate. The Landlords claim that they were unable to rent out the rental unit until July 1, 2018 as a result of the Tenant's failing to cooperate and abide by the Act. The Landlords are claiming for the loss of rent for June 2018, in the amount of \$1,690.00.

The Landlords provided testimony and picture evidence of the condition of the rental unit upon the Tenant moving out. The Landlords stated the rental unit was not cleaned whatsoever; with garbage throughout, old food and dirty dishes on the counter, a fridge full of food, missing fixtures and damage to the basement ceiling and stairs. The Landlords claimed for their own time, at minimum wage, to clean and repair the rental unit and to replace a light fixture in the bathroom, a wall scone in the bedroom and other miscellaneous items for a total of \$1,061.06.

The Landlords have claimed \$1,115.95 for gas and vehicle depreciation as a result of the travel that they had to incur as a result of the Tenant's failure to comply with the Act. They have also claimed a loss for the cost of the filing fee for a previous Dispute Resolution Application and the cost for a Writ of Possession in the amount of \$120.00, due to the Tenant failing to move out of the rental unit on the agreed upon date of May 28, 2018.

Analysis

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 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.

I accept the Landlords' undisputed testimony that the Tenant failed to pay his rent as established in the Tenancy Agreement and pursuant to Section 26 of the Act. I find that the Landlords have established a monetary claim for the loss of rent for March, April and May 2018, for a total of \$3,460.00.

I accept the Landlords' undisputed testimony and evidence that the Tenant failed to cooperate with the Landlords when they attempted to show the rental unit to prospective new tenants. I find that the Landlords were unable to rent out the rental unit as a result of the Tenant's breach of Section 29 of the Act, specifically, the Landlord's right to enter the rental unit with proper notice. I find that the Landlords have established a monetary claim for the loss of rental income for June 2018, in the amount of \$1,690.00. I also find that the Landlords demonstrated diligence in renting the unit out one month after the Tenant moved, in accordance with Section 7(2) of the Act.

I accept the Landlords' testimony and evidence that the rental unit required significant cleaning and repair upon the Tenant's vacancy. I find that the Landlords have established a monetary claim for their losses in the amount of \$1,061.06.

Landlords inevitably incur expenses as a result of being Landlords. As such, I do not award the Landlords compensation for gas or vehicle depreciation, therefore, am dismissing that part of their claim.

Further, as I have not reviewed or made any findings in regard to the Landlords' previous Dispute Resolution Hearings, I decline to award compensation for those filing fees.

I do find that the Landlords incurred a further loss of \$120.00 in regard to obtaining a Writ of Possession due to the Tenant's failure to vacate the rental unit by May 28, 2018.

This Application has merit and I find that the Landlords should be compensated for the cost of the filing fee, in the amount of \$100.00.

I issue a Monetary Order in the Landlords' favour under the following terms:

Item	Amount
Unpaid rent for March, April & May 2018	\$3,460.00
Compensation for June 2018 rent	1,690.00
Compensation for cleaning and repair of the rental unit	1,061.06
Writ of Possession	\$120.00
Compensation for filing fee for this Application	100.00
Total Monetary Order	\$6,431.06

Conclusion

Pursuant to Section 67 of the Act, I grant the Landlords a Monetary Order for \$6,431.06. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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: November 21, 2018

Residential Tenancy Branch