



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 FFL MNDCL-S MNDL-S MNRL-S OPR

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on December 12, 2018 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession;
- a monetary order for damage or loss;
- a monetary order for damage or compensation;
- a monetary order for unpaid rent;
- an order granting recovery of the filing fee; and
- to retain the security deposit.

J.S. appeared on behalf of the Landlord and provided affirmed testimony. No one appeared on behalf of the Tenant.

J.S. testified that she served the Tenant with the Application package and documentary evidence on December 14, 2018 by Registered Mail. The Landlord submitted a copy of the registered mail receipt in support. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 5 days later.

J.S. was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

At the start of the hearing, J.S. indicated that the Landlord had sought rent for February 2019, however, stated that at the time of the Application, the Landlord was uncertain as to when the hearing date would be. J.S. indicated that the Application for February 2019 rent was premature and is therefore being withdrawn. The Landlord has liberty to reapply for this matter.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent, pursuant to Section 46 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to a monetary order for damage, pursuant to Section 67 of the *Act*?
4. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?
5. Is the Landlords entitled to retain the security deposit, pursuant to Section 38 of the *Act*?

Background and Evidence

J.S. testified that the tenancy began on October 29, 2014. J.S. indicated that rent in the amount of \$940.00 is due to the Landlord by the first day of each month, as well as a security deposit in the amount of \$450.00 was paid to the Landlord. A tenancy agreement between the parties was submitted by the Landlord in support.

J.S. testified that the Landlord is seeking compensation in the amount of \$35.00 relating to a lock that was replaced on the door of the rental unit. J.S. testified that she is unsure as to why the lock needed to be changed, however, stated that locks are typically only changed if the Tenant changed the lock without permission, or if the Tenant requested a lock changed out of concern. The Landlord provided a receipt in support.

The Landlord is also seeking a monetary order for unpaid rent. J.S. testified that the Tenant has failed to pay rent in full during;

Unpaid Rent Months	Amount
April 2018	\$6.00

May 2018	\$940.00
June 2018	\$940.00
July 2018	\$940.00
October 2018	\$340.00
November 2018	\$940.00
December 2018	\$940.00
January 2019	\$940.00

J.S. testified that the Landlord and Tenant entered into a repayment plan in August 2018. According to J.S., the Tenant failed to maintain the repayment agreement which resulted in the Landlord issuing the 10 Day Notice, dated December 11, 2018, with an effective vacancy date of December 26, 2018. At that time, rent in the amount of \$2,200.00 was noted as outstanding on the 10 Day Notice. J.S. stated that this amount did not reflect the amount of unpaid rent included in the repayment agreement. J.S. testified that the Landlord served the 10 Day Notice to the Tenant via registered mail on December 11, 2018.

J.S. stated that the Landlord has received partial payment on September 14, 2018 as well as on October 9, 2018, towards the balance of outstanding rent as part of a repayment plan. J.S. stated that at the time of Landlord's Application, rent in the amount of \$4,826.00 was left unpaid.

In addition, J.S. testified rent was also not paid when due in January 2019. Currently, rent in the amount of \$5,766.00 is outstanding.

If successful, the Landlord is also seeking repayment for the filing fee in relation to the Application. As noted above, the Tenant did not attend the hearing to dispute the Landlord's evidence.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Landlord's claim seeking compensation for damage or loss in the amount of \$35.00 for changing a lock, J.S. was unsure as to the exact reasoning for having to change the lock. Therefore, I find there is insufficient evidence before me to confirm that the damage was caused by the Tenant violating the *Act* or tenancy agreement.

I dismiss the Landlord's claim for compensation relating to damage or loss, without leave to reapply.

In relation to the Landlord's application for a monetary order for unpaid rent, I find;

Section 46 of the *Act* states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the Tenant receives the notice.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Section 46(5) says that if a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

Based on the oral testimony from J.S. and in the absence of evidence to the contrary, I find that the 10 Day Notice was served on the Tenant by registered mail on December 11, 2018. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 5 days later. I find the Tenant is deemed to have received the 10 Day Notice on December 16, 2018. Accordingly, pursuant to section 46(4) of the *Act*, the Tenant had until December 21, 2018, to either pay rent in full or dispute the 10 Day Notice by filing an application for dispute resolution.

J.S. testified the Tenant has not paid rent and continues to reside in the rental unit. There is no evidence before me to find that the Tenant disputed the 10 Day Notice. As a result, pursuant to section 46(5) of the *Act*, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

In addition, section 26(1) of the *Act* confirms: 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.

There is no evidence before me to indicate that the Tenant had a right to deduct all or a portion of the rent. I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$5,766.00. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlord is entitled to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$5,416.00, which has been calculated as follows:

<u>Claim</u>	<u>Amount</u>
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Unpaid rent:	\$5,766.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$450.00)
TOTAL:	\$5,416.00

Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after it is served on the Tenant. This should be done as soon as possible. If the Tenant fails to comply with the order of possession it may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$5,416.00. This order must be served on the Tenant as soon as possible. If the Tenant fails to comply the monetary order it may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: January 30, 2019

Residential Tenancy Branch