



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNDCL-S MNRL-S OPR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent and for damages to the rental unit pursuant to section 67;
- authorization to retain the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application pursuant to section 72

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 10:00 a.m. to enable the tenant to call into this hearing scheduled for 9:30 a.m.

The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed 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. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

In accordance with Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* ("Rules"), this hearing was conducted in the absence of the tenant.

The landlord testified that he served the tenant with the Application for Dispute Resolution hearing package by registered mail on December 14, 2018. The landlord read out the Canada Post tracking number for the mailing to me. Based on the landlord's oral testimony, I find the tenant is deemed served with the Application for Dispute Resolution hearing package on December 19, 2018, five days after the registered mailing, pursuant to section 89 and 90 of the *Act*.

At the outset of the hearing the landlord testified the tenant moved out of the rental unit on January 9, 2019 and did not provide a forwarding address to the landlord.

As a result, the landlord sought to amend his claim to withdraw his claim for an order of possession as the tenant has already moved out. I amended the landlord's application to

exclude the order of possession in accordance with Rule 5 of the Residential Tenancy Branch Rules of Procedure.

In addition, the landlord sought to amend his claim to include damages to the rental unit discovered after the tenant moved out. The landlord sought an additional \$650.00 for painting and \$80.00 for carpet cleaning.

Residential Tenancy Branch Rule of Procedure 4.2 states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

Residential Tenancy Policy Guideline-23 ("PG-23") gives guidance to an arbitrator when considering amendments. Part E of the guideline reads, in part,

"An application must contain sufficient details about the dispute and where it does not, the arbitrator may dismiss the application with or without leave to reapply...In general, a request to amend an application for dispute resolution should not be granted when the amendment results in prejudice to a party"

It would be prejudicial to the tenant to adjudicate a claim for cleaning and painting when the tenant is unaware that the landlord is seeking it. For this reason, the landlord's claim for these damages should not be adjudicated until after the landlord has served the tenant with a formal Notice of Dispute Resolution Proceedings. Therefore, I do not allow the landlord's amendment for claims for painting or cleaning. The landlord is at liberty to file this application subject to any limitations in the Act for these damages.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for rental arrears and utilities?

Can the landlord retain the security deposit?

Can the landlord recover the filing fee?

Background and Evidence

With the exception of the landlord's handwritten application for dispute resolution submitted to the Residential Tenancy Branch on December 14, 2018, no documentary evidence was presented during the hearing. The landlord's evidence wholly consisted of undisputed oral testimony.

On December 2, 2018, the landlord served the 10 Day Notice to End Tenancy ("Notice") on the tenant by sliding it under the tenant's door and by posting a copy to the exterior of the door. The posting to the door was witnessed by the landlord's spouse, however no proof of service document was filed as evidence.

The tenancy began on July 1, 2018 with a monthly rent of \$1,250.00. The rental unit is the basement suite in the landlord's house. The tenant was to pay \$625.00 rent and social assistance was to pay the remaining \$625.00 rent each month. No condition inspection report was done at the commencement of the tenancy and the parties did not enter into a written tenancy agreement. The landlord accepted a security deposit in the amount of \$625.00 which is still being held by the landlord.

The landlord testified that when the tenant moved out on January 9, 2019, the tenant had not paid for the rent for the month of December. As of the date of the hearing on January 24, 2019, the tenant is in arrears of rent for a total of \$1,000.00. This is with a different amount than what was claimed on the paper application the landlord filed seeking \$2,250.00 in unpaid rent, however the landlord gave clear, unwavering testimony that the tenant owes \$1,000.00 for December rent.

During the tenancy, the landlord alleges the tenant watched pay per view movies and that the landlord paid for it. He seeks compensation of \$143.00 for these charges.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The landlord seeks compensation for the pay per view movies watched by the tenant. As no tenancy agreement was provided, I am unable to determine whether there were agreements in place for this, or whose responsibility it was to pay for them. I have no evidence before me to make inferences that the movies were watched by the landlord or the tenant. I decline to award the landlord for the pay per view movies.

Based on the landlord's undisputed evidence that the tenant was in arrears of rent for the month of December 2018 in the amount of \$1,000.00, I award him this amount.

I award the landlord a monetary order in the amount of \$1,187.50.

As the landlord's application was successful, the landlord is entitled to recover the \$100.00 filing fee for the cost of the application.

The landlord continues to hold the tenant's security deposit in the amount of \$625.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the entire security deposit portion in partial satisfaction of the monetary claim.

Item	Amount
Rental Arrears	\$1,000.00
Less Security Deposit	(625.00)
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$475.00

Conclusion

Based on the above, I grant the landlord a monetary order pursuant to section 67 in the amount of \$475.00. This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court of British Columbia (small claims) and be 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: January 28, 2019

Residential Tenancy Branch