



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNDCL-S MNDL-S MNRL-S

Introduction

This hearing dealt with the landlord's application pursuant to the Residential Tenancy Act (the "Act") for a monetary order for unpaid rent, a monetary order for lost rent due to tenant's lack of proper notice to end tenancy, a monetary order for compensation for damages to the rental unit and a request for reimbursement of the filing fee.

The landlord and landlord's witness, PC, attended the hearing but no one appeared on behalf of the tenants. I left the teleconference hearing connection for the duration of the hearing to enable the tenants an opportunity to call. I confirmed that the Notice of Hearing provided the correct call-in numbers and participant codes. I also confirmed from the teleconference system that the landlord and I were the only persons who had called into this teleconference.

The landlord testified that she served the tenants with the notice of dispute resolution and her initial evidence package via Canada Post registered mail on November 29, 2018. The landlord provided a copy of the registered mail tracking numbers. The landlord testified that she served the tenants with the remainder of her evidence via Canada Post registered mail on January 18, 2019. The landlord provided a copy of the registered mail tracking numbers associated with this second package. I find that the landlord has properly served the tenants with the notice of dispute resolution and the landlord's evidence in accordance with sections 88 & 89 of the *Act* and section 3.1 of the *Residential Tenancy Branch Rules of Procedure*. Pursuant to section 90 of the *Act*, I deem the tenants served with the notice of dispute and initial evidence package on December 4, 2018 and I deem the tenants served with the second evidence package on January 28, 2019, five days after their initial posting.

Issue(s) to be Decided

Is the landlord entitled to a monetary order pursuant to section 67 of the *Act*?

Is the landlord entitled to reimbursement of the filing fee?

Background and Evidence

The landlord testified that the parties had a fixed term tenancy starting November 15, 2017 and ending November 30, 2018. The landlord testified that the monthly rent was \$1,980.00 and the tenants paid a \$990.00 security deposit which the landlord continues to hold. The landlord provided a copy of the tenancy agreement.

The landlord testified that the parties completed a condition inspection report on move in. The landlord provided a copy of the condition inspection report.

The landlord testified that the tenants did not pay the November 2018 rent. The landlord testified that the tenants sent the landlord a cheque for the November 2018 rent but this cheque was rejected by the bank for insufficient funds in the tenants' bank account. The landlord provided a bank statement showing the rejection of the November 2018 rent cheque.

The landlord testified that the tenants agreed to continue the tenancy at the end of the fixed term. The landlord testified that she went to the rental unit on November 20, 2018 to sign the new tenancy agreement but she discovered that the rental unit was empty and the tenants had abandoned the rental unit. The landlord testified that she received the tenants' forwarding address on November 27, 2018.

The landlord testified that the tenants damaged the rental unit and they left the property in a dirty condition. Specifically, the landlord testified that a portion of the laminate flooring in the kitchen was water damaged and there was a large hole in the living room wall. The landlord provided multiple photographs showing the condition of the property.

The landlord submitted a cleaning estimate dated January 2, 2019 for \$236.00 to \$295.00 plus GST. The estimate was based upon four to five hours of maid service. I asked the landlord why the cleaning estimate was dated over a month after the tenants moved out and the landlord testified that they had cleaned the rental unit much earlier and the landlord paid \$200.00 cash for the cleaning service. However, the landlord testified that the cleaning service did not provide a receipt so the landlord requested the cleaning estimate later.

The landlord also presented a repair invoice for \$777.00 from a design and architecture business dated December 21, 2018 for repairs to the wall and flooring. The invoice stated the following costs:

<u>Item</u>	<u>Amount</u>
Wall repair supplies	\$100.00
Wall repair labour (2.5 hours at \$120.00 / hour)	\$300.00
Floor repair supplies	\$100.00
Floor repair labour (2 hours at \$120.00 / hour)	\$240.00
Tax	\$37.00

Total	\$777.00
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The landlord testified that she lost rent from December 2018 because the tenant did not provide a month of notice before abandoning the tenancy. The landlord testified that she immediately listed the rental unit on multiple online classified services. The landlord provided copies of multiple rental listings. The landlord testified that a new tenant signed a tenancy agreement on December 20, 2018 for a tenancy starting on January 1, 2019.

Analysis

The landlord has requested a monetary order for unpaid rent for November 2018 and for loss of rent for December 2018 for tenant's lack of proper notice to end tenancy. The landlord also seeks compensation for damages to the wall and floor for cleaning expenses. I will analyze each of these claims separately.

Unpaid Rent for November 2018

I find that the tenants were obligated to pay the landlord rent in the amount of \$1,980.00 per month pursuant to the tenancy agreement. I find that the tenants have not paid rent for November 2018. Pursuant to section 71(1) of the *Act* which states, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results." I find the landlord is entitled to a monetary award of \$1,980.00 for unpaid rent in November 2018.

Loss of Rent for December 2018 for Tenant's Lack of Notice to End Tenancy

The landlord is seeking compensation for lost rent in December 2018 due to tenants' lack of proper notice to end the tenancy.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and

4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

I am satisfied by landlord's unrefuted testimony that the rental unit was vacant in December 2018 and that the landlord lost rent from this vacancy in December 2018.

I am also satisfied that the landlord's loss of rent directly resulted from the tenants' violation of the *Act*. I am convinced by the landlord's undisputed testimony and the terms of the tenancy agreement that the landlord and tenants had a fixed term tenancy agreement that expired on November 30, 2018. Furthermore, I find that the tenants did not provide notice to end that the tenancy in violation of section 45 of the *Act* which requires tenants to give the landlord at least one month of notice to end a periodic or fixed term tenancy.

In addition, even though the tenancy agreement stated that the tenancy expired on November 30, 2018, section 44(3) of the *Act* states that, if the landlord and tenant do not enter a new tenancy agreement at the expiration of a fixed term tenancy agreement, then the parties are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms. For these reasons, I find that the tenants breach of the *Act* caused the landlord's loss of rent in December 2018.

I find that the amount of the landlord's loss of rent for December 2018 is \$1,980.00 based upon the landlord's undisputed testimony and the terms of the tenancy agreement.

I find that the landlord has adequately mitigated her loss by finding another tenant by December 20, 2018 for a tenancy starting on January 1, 2019. I am satisfied by the landlord's undisputed testimony and the corroborating rental listings submitted that the landlord has attempted to find a new tenant as quickly as possible.

I find that the landlord is entitled to a monetary award of \$1,980.00 for lost rent for December 2018 due to tenants' lack of proper notice to end tenancy.

Compensation for Cleaning Costs

I am not satisfied that the landlord has sustained any damages for cleaning expenses. I find that the photographs submitted by the landlord do not show a need for significant cleaning services. The tenants are only required to leave the rental unit reasonably clean at the end of the tenancy pursuant to section 37(2)(a) of the *Act*.

Furthermore, I find that the cleaning estimate submitted by the landlord is not credible evidence of necessary cleaning expenses. The cleaning estimate was dated over a month after the tenants vacated the rental unit and the estimate appears to be excessive. In addition, the landlord admitted that the cleaning estimate was generated after the cleaning services were rendered. I do not find it credible that an estimate rather than an invoice would be generated after the service was rendered.

I dismiss the landlord's request for compensation for cleaning costs.

Compensation for Wall Damage

I find that the landlord's undisputed testimony and the corroborating photograph is sufficient evidence to establish that the tenants damaged the living room living room wall. I find that the supplies cost of \$100.00 stated in the repair invoice is reasonable. However, I find the labour cost of \$120.00 per hour to be excessive. I find that the landlord could have mitigated the repair costs by retaining a general contractor rather than a design and architect contractor.

Accordingly, I will award the landlord compensation based upon a general contractor rate of \$50.00 per hour rather than \$120.00 per hour. Therefore, I will grant the landlord a monetary order of \$225.00 (\$100 supplies plus 2.5 hours of labour at \$50.00 per hour) for the wall repair.

Compensation for Floor Damage

I am not satisfied that the landlord has satisfied her onus of proving that the tenants are responsible for the water damage. The photograph submitted by the landlord show the water damage is under the refrigerator provided by the landlord. The landlord did not provide adequate evidence to prove that the water damage was caused by the tenants rather than a leak from the landlord's refrigerator. Accordingly, I deny the landlord's request for compensation for the floor damage

Based on the undisputed testimony of the landlord and the tenancy agreement, I find that the landlord holds a security deposit of \$990.00 which may be deducted from the damages owed by the tenants pursuant to section 72(2)(b) of the *Act*.

In addition, since the landlord has been successful this matter, I award the landlord \$100.00 for recovery of the filing fee which may also be deducted from the security deposit pursuant to section 72(2)(b) of the *Act*.

Accordingly, I grant the landlord a monetary order of **\$3,295.00** calculated as follows:

<u>Item</u>	<u>Amount</u>
Damages payable to the landlord	\$4,185.00
Filing fee recovered by the landlord	\$100.00
Less: Security deposit held by the landlord	(\$990.00)

Total	\$3,295.00
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Conclusion

I find that the landlord is entitled to an award of \$3,195.00 for unpaid rent, loss of rent and damage to the rental unit.

I find that the landlord is entitled to recover \$100.00 as reimbursement of her filing fee.

The landlord is granted a monetary order in the amount of **\$3,295.00**. This order must be served on the landlord. If the landlord does not comply with this order, the landlord may enforce this order in the Small Claims Division of the British Columbia 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: February 27, 2019

Residential Tenancy Branch