



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S MNDL-S MNRL-S, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on March 11, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, site, or property;
- a monetary order for money owed or compensation for damage or loss;
- a monetary order for unpaid rent;
- an order granting authorization to retain the security deposit; and
- an order granting recovery of the filing fee.

The Tenants as well as the Landlord and the Landlord's Agent L.M. attended the hearing at the appointed date and time, and provided affirmed testimony.

Preliminary Matters

The Landlord made an amendment to his Application on March 12, 2019 requesting an order of possession for unpaid rent. During the hearing, the parties agreed that the tenancy ended on March 19, 2019 after the Tenants moved out of the rental unit. Therefore, the Landlord is no longer seeking the order of possession.

The Landlord testified that he served his Application, the amendment, and documentary evidence package to the Tenants in person on March 12, 2019. The Tenants confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Tenants confirmed that they did not serve their documentary evidence to the Landlord prior to the hearing.

Section 88 of the *Act* stipulates that documents such as evidence must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served; or
- (i) as ordered by an Arbitrator

The Tenants stated that they did not serve the Landlord with a copy of their evidence. According to the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"), 3.16 Respondents' proof of service indicates; at the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each Applicant was served with all their evidence as required by the *Act* and these Rules of Procedure.

Rules of Procedure 3.17 indicates that evidence not provided to the other party in accordance with the *Act*, may or may not be considered during the hearing. I accept that the Tenants did not serve their evidence to the Landlord; therefore the only evidence I will consider from the Tenants is their oral testimony during the hearing

The parties were 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 Rules of Procedure. However,

only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for damage, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to a monetary order for compensation, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to a monetary order for unpaid rent or utilities, pursuant to Section 67 of the *Act*?
4. Should the Landlord be authorized to apply the security deposit against their claim, in accordance with Sections 38 and 72 of the *Act*?
5. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on April 1, 2018. Rent in the amount of \$1,350.00 was due to the Landlord each month. The Tenants paid a security deposit in the amount of \$675.00 which the Landlord continues to hold. The tenancy ended on March 19, 2019 after the Tenants removed the last of their possessions and returned the keys.

The Landlord is claiming \$1,350 .00 for unpaid rent. The parties agreed that the Tenants failed to pay rent in the amount of \$1,350.00 for the month of March 2019. As a result, the Landlord served the Tenants in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 4, 2019 ("the 10 Day Notice") with an effective vacancy date of March 14, 2019. The Tenants confirmed receipt on the same day.

The 10 Day Notice states that the Tenants have failed to pay rent in the amount of \$1,350.00 which was due on March 1, 2019. The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice.

The Tenants stated that they felt justified in not paying rent as they went without heat in their rental unit.

The Landlord is also claiming \$675.00 for cleaning and repairs to the rental unit. The Landlord stated that a condition inspection report was completed between the parties on March 19, 2019. The Landlord testified that during the inspection, it was noted that there was damage to the walls in the rental unit which required patching and painting, as well as the replacement of crown molding.

L.M. testified that the rental unit was left unclean, which she considered to be uninhabitable. L.M. testified that it took two people to clean for seven hours each over a two day period to get the rental unit presentable again.

The Tenants testified that they cleaned the rental unit and do not agree with the Landlord's assessment of overall condition of the rental unit. The Tenants agreed to the deduction of \$100.00 for cleaning costs.

Analysis

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

Section 26 of the Act states that a Tenants must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, the regulations, or the tenancy agreement, unless the Tenants have a right under this Act to deduct all or a portion of the rent.

In relation to the 10 Day Notice dated March 4, 2019, the Tenants acknowledged receipt. Therefore, pursuant to section 88 of the *Act*, I find the above document was sufficiently served for the purposes of the *Act*.

I accept that the parties agreed that the Tenants failed to pay rent for the month of March 2019. Therefore, I find that the Landlord has established an entitlement to a monetary amount of \$1,350.00 for unpaid rent.

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. 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 Tenants. 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.

The Landlord is claiming \$675.00 for cleaning and repairs to the rental unit. I find the Landlord provided insufficient documentary evidence to demonstrate the scope of the repairs and cleaning required. The Landlord did not submit a copy of the condition inspection report, nor did they submit receipts or a breakdown of costs associated with the repairs and cleaning conducted. As the Tenants agreed to compensate the Landlord in the amount of \$100.00 for cleaning, I find the Landlord is entitled to a monetary amount of \$100.00.

Having been partially successful, I find the Landlord is entitled to recover the filing fee paid to make the Application. I also find it appropriate in the circumstances to order that the Landlord 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 \$875.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$1,350.00
Cleaning:	\$100.00
Filing fee:	\$100.00
LESS security deposit:	(\$675.00)
TOTAL:	\$875.00

Conclusion

The Tenants have breached the Act by not paying rent. The Tenants agreed to compensate the Landlord for cleaning. After the offset of the security deposit, the Landlord is granted a monetary order in the amount of \$875.00. The order should be served to the Tenants as soon as possible and 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: April 8, 2019

Residential Tenancy Branch