



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRYSTAL RIVER COURT LTD. and
[tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing convened as a result of cross applications. In the Landlord's Application for Dispute Resolution, filed on January 11, 2019, the Landlord sought monetary compensation from the Tenant for unpaid rent, loss of rent and damage to the rental unit, authority to retain the Tenant's security deposit and to recover the filing fee. In the Tenant's Application for Dispute Resolution, filed on January 15, 2019, the Tenant sought return of their security deposit.

The hearing of the parties' cross applications was scheduled for teleconference at 1:30 p.m. on May 3, 2019. Only the Landlord's agent, J.N., called into the hearing. He gave affirmed testimony and was provided the opportunity to present their 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 Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Tenant's Failure to Call into Hearing

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 2:08 p.m. Additionally, 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's Agent and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package.

The Landlord's Agent testified that he served the Tenant with the Notice of Hearing and the Application on January 14, 2019 by registered mail. The Landlord then filed an amendment increasing the monetary claim to \$4,170.35. The Agent testified that the amendment was served on the Tenant on April 15, 2019. A copy of the registered mail tracking number for both packages is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served the original Application as of January 19, 2019 and the Amendment on April 20, 2019; as such I proceeded with the hearing in their absence.

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

Commencement of Hearing:

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

Consequences of not attending the hearing

If a party or their agent fails to attend the 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 hearing, and the Landlord called in and was ready to proceed, I dismiss the Tenant's claim without leave to reapply.

Preliminary Matters—Delivery of Decision and Order by Email

The Landlord's agent confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. What should happen to the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement confirming that the tenancy began August 1, 2018. Monthly rent was payable in the amount of \$1,250.00 and the Tenant paid a \$625.00 security deposit and a \$625.00 pet damage deposit.

The Landlord applied for and was granted an Order of Possession on December 11, 2018. The file number for that matter is included on the unpublished cover page of this my Decision.

The Landlord's Agent confirmed that the Tenant moved out on or about December 30, 2018. The Tenant failed to pay the December rent in the amount of \$1,250.00. Further, and as a result of the date the Tenant vacated the Landlord was not able to re-rent the unit as of January 1, 2019. The Agent stated that the rental unit was not re-rented until February 15, 2019.

The Landlord submitted that the Tenant also failed to clean the rental unit such that the Landlord incurred the cost to clean and repair. In written submissions filed by the Landlord the Landlord wrote that the detailed the following:

- oven was not cleaned;
- the walls in the master bedroom were not cleaned;
- the carpets were stained, dirty and damaged;
- the walls in the kitchen and master bedroom were patched but not painted;
- the Tenant tried to paint the walls in the third bedroom but did not use a drop sheet such that paint was dripped onto the carpet. The wall also required repainting; and,
- the door knob in the third bedroom was damaged.

Photos submitted by the Landlord confirmed the above claims.

The Landlord also filed a *Monetary Orders Worksheet* in which the following was claimed:

Replace carpet in third bedroom	\$681.26
Paint walls in the living room and kitchen	\$200.00
Cleaning	\$150.00
Paint	\$49.26
Replace door knobs and sink stopper	\$89.97
Carpet cleaning	\$309.75
Cleaning supplies	\$6.25
Unpaid utilities	\$183.86
Loss of rent for two months	\$2,500.00
TOTAL CLAIMED	\$4,170.35

The Landlord's Agent stated that the carpet was approximately 2 years old in the bedroom. He also reiterated that the carpet had to be replaced because the Tenant splattered paint on the carpet. As well the stains could not be removed despite the fact the Landlord hired a professional carpet cleaning company.

The Landlord's Agent stated that the rental unit needed to be painted due to excessive holes in the walls as well as patching of the walls done by the Tenant. The Landlord confirmed that the rental unit had been painted just before the tenancy began.

The Landlord's Agent stated that the door knobs were damaged by the Tenant and required replacement; this was confirmed by photographic evidence submitted by the Landlord. The Landlord's Agent also stated that the Tenant also removed the sink stopper such that the Landlord incurred the cost to replace it.

Pursuant to clause 8 and 19 ("Additional Terms") of the residential tenancy agreement the Tenant was responsible for paying the water, sewer and garbage utility. The Agent confirmed that he proportioned the bill for the time involved such that the Tenant owed \$183.86 for 5 of the 12 months contained in the billing cycle.

The Agent confirmed that he was able to re-rent the unit as of February 15, 2019. He further confirmed the Landlord sought compensation for loss of rent for two months in addition to recovery of the filing fee.

Analysis

In a claim for damage or loss under section 67 of the *Residential Tenancy Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
 - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

After consideration of the Landlord's undisputed testimony and evidence and on a balance of probabilities, I find as follows.

I find that the Tenant failed to pay rent for December 2018 such that the Landlord is entitled to the sum of **\$1,250.00** for unpaid rent for the month of December 2018. As the Tenant vacated the rental unit on December 30, 2018, I find the Landlord lost a further months' rent (January 2019) such that I find the Landlord is entitled to compensation for this amount from the Tenant as well: **\$1,250.00**.

The addendum to the residential tenancy agreement provided that the Tenant was responsible for paying the water, sewer and garbage municipal utility. I accept the

Landlord's Agent's testimony that the Tenant failed to pay as required and therefore I award the Landlord the **\$183.86** claimed.

I find the Tenant failed to clean and repair the rental unit as required by section 37 of the *Act*. I am persuaded by the Landlord's Agent's testimony, the photos submitted by the Landlord, as well as the condition inspection report provided in evidence, that the costs incurred to repair and clean the rental unit were necessary and reasonable. I therefore award the Landlord the amounts claimed.

As the Landlord has been successful, I also award them recovery of the filing fee pursuant to section 72 of the *Act*.

Conclusion

The Landlord is entitled to monetary compensation in the amount of **\$4,270.35** for the following:

Unpaid rent for December 2018	\$1,250.00
Loss of rent for January 2019	\$1,250.00
Unpaid water, sewer and garbage utility invoice	\$183.86
Cost to replace the carpet in third bedroom	\$681.26
Cost to paint the walls in the living room and kitchen	\$200.00
Cleaning costs	\$150.00
Paint costs	\$49.26
Costs to replace the door knobs and the sink stopper	\$89.97
Carpet cleaning costs	\$309.75
Cost of cleaning supplies	\$6.25
Recovery of the filing fee	\$100.00
TOTAL AWARDED	\$4,270.35

Pursuant to sections 38 and 72 of the *Act*, I authorize the Landlord to retain the Tenant's \$1,250.00 in deposits towards the amounts awarded and I grant the Landlord a Monetary Order for the balance due in the amount of **\$3,020.35**. The Landlord must serve this Monetary Order on the Tenant and should the Tenant not pay as ordered, the Landlord may file and enforce the Order in the B.C. Provincial Court (Small Claims Division).

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: May 13, 2019

Residential Tenancy Branch