



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 convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord sought an Order of Possession and monetary compensation from the Tenants, authority to retain their security deposit and recovery of the filing fee.

The hearing was scheduled for 9:30 a.m. on May 28, 2019.

Only the Landlord called into the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Tenants did not call into this hearing, although I left the teleconference hearing connection open until 9:51 a.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 and I were the only ones who had called into this teleconference.

As the Tenants did not call in, I considered service of the Landlord's hearing package. The Landlord testified that she served the Tenants with the Notice of Hearing and the Application on April 12, 2019 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.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 Tenants were duly served as of April 17, 2019 and I proceeded with the hearing in their absence.

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 Matters

The Landlord confirmed her email addresses during the hearing as well as her understanding that this Decision and any applicable Orders would be emailed to her.

The Landlord confirmed that the Tenants vacated the rental unit on April 30, 2019 such that an Order of Possession was no longer required.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. Should the Landlord be authorized to retain the Tenants' 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 this tenancy began on May 1, 2018. Monthly rent was \$2,300.00 and the Tenants paid a security deposit of \$1,150.00.

The Landlord testified that the Tenants failed to pay rent for March and April 2019 such that the sum of \$4,600.00 was owed for rent. The Landlord stated that shortly before the tenancy ended, the Tenant, A.M., paid \$2,300.00 for "her share" of the March and April 2019 rent, such that the sum of \$2,300.00 remained owing.

Although the Tenants vacated the rental unit on April 30, 2019, they informed the Landlord that they would be moving from the rental unit on April 28 or 29, 2019 such that the Landlord was not able to re-rent the rental unit for May 1, 2019. Accordingly, she also sought monetary compensation for loss of rent for May 2019 in the amount of \$2,300.00.

The Landlord testified that she received a parking fine in the amount of \$200.00 due to the Tenants failing to observe the building's parking rules. She confirmed that she sought monetary compensation from the Tenants for this amount.

The Landlord also testified that due to the condition the rental unit was left in by the Tenants she incurred the costs to repair and clean the rental unit; in support she submitted in evidence receipts for these expenses totalling \$1,995.00 and \$315.00 respectively. She provided estimates for these amounts, which she confirmed were in fact the amounts she paid when the work was completed.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *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 testimony and evidence before me, and on a balance of probabilities I find the following.

I accept the Landlord's undisputed testimony that the Tenants failed to pay rent as required by the tenancy agreement and section 26 of the *Residential Tenancy Act* and that as of the date the tenancy ended the sum of \$2,300.00 was outstanding. Although one of the Tenants paid "her ½ share" the Tenant are jointly and severally liable for paying the rent, such that I find the \$2,300.00 payment made by the Tenant, A.M., to be applicable to the March 2019 rent, leaving **\$2,300.00** owing for April 2019. I find the Landlord is entitled to recovery of this amount.

I further accept the Landlord's evidence that due to the date the Tenants left the rental unit she was not able to re-rent the rental unit immediately and suffered loss of rent for May 2019; again, I find she is entitled to recovery of the **\$2,300.00** amount from the Tenants.

I accept the Landlord's evidence that she received a parking fine of **\$200.00** due to the Tenants failure to observe the parking rules at the building in which the rental unit was located. I am persuaded by the documentary evidence filed by the Landlord that she incurred this fine and brought this amount to the attention of the Tenants. I therefore find this amount to be recoverable from the Tenants.

The documentary evidence submitted by the Landlord, in addition to her testimony, confirms she incurred the sum of **\$1,995.00** to repair the rental unit and **\$315.00** to clean the carpets in the rental unit at the end of the tenancy and I award her compensation for these amounts.

Having been substantially successful I find the Landlord is entitled to recovery of the **\$100.00** filing fee.

Conclusion

The Landlord is entitled to monetary compensation in the amount of **\$7,210.00** for the following:

Unpaid rent for April 2019	\$2,300.00
Loss of rent for May 2019	\$2,300.00
Parking fine	\$200.00
Repair costs	\$1,995.00
Carpet cleaning	\$315.00
Recovery of the filing fee	\$100.00
TOTAL AWARDED	\$7,210.00

I grant the Landlord authority, pursuant to sections 38 and 72 of the *Act*, to retain the Tenants' \$1,150.00 security deposit and I award them a Monetary Order for the balance due in the amount of **\$6,060.00**. This Order must be served on the Tenants and may, if necessary, be filed and enforced 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: June 5, 2019

Residential Tenancy Branch