



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on February 22, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss;
- a monetary order for unpaid rent;
- an order granting recovery of the filing fee; and
- to retain the security deposit.

The hearing was scheduled for 1:30pm on June 11, 2019 as a teleconference hearing. M.R. appeared on behalf of the Landlord and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 12 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that M.R. and I were the only persons who had called into this teleconference.

M.R. testified the Application and documentary evidence package was served to the Tenant by registered mail. A copy of the Canada Post registered mail receipt was submitted confirming the mailing took place on February 27, 2019. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on March 4, 2019 the fifth day after their registered mailing.

M.R. was 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 Residential Tenancy Branch Rules of Procedure (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 unpaid rent, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to a monetary order for damage, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?
4. Is the Landlord entitled to retain the security deposit, pursuant to Section 38 of the *Act*?

Background and Evidence

M.R. stated that the tenancy began on August 1, 2013. Rent in the amount of \$1,271.00 was due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$575.00 which the Landlord continues to hold. M.R. stated that the Tenant vacated the rental unit at the end of February 2019.

M.R. stated that the Tenant failed to pay rent in the amount of \$1,271.00 for the month of February 2019. M.R. stated that he subsequently served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent dated February 4, 2019 (the "10 Day Notice") with an effective date of February 14, 2019 by posting it to the Tenant's door. M.R. stated that the Tenant did not pay the outstanding rent owed before vacating the rental unit at the end of February 2019.

M.R. stated that the Landlord is also seeking \$100.00 to replace two sets of blinds that were damaged during the tenancy. The Landlord submitted a picture of the damaged blinds as well as a receipt for the replacement of the blinds in support.

Analysis

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

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*. Pursuant to Residential Tenancy Policy Guideline #16 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 Tenant. 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.

M.R. stated he served the 10 Day Notice to the Tenant on February 4, 2019 by posting it to the Tenant's door. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 3 days later. I find the Tenant is deemed to have received the 10 Day Notice on February 7, 2019. Accordingly, pursuant to section 46(4) of the *Act*, the Tenant had until February 12, 2019, to either pay rent in full or dispute the 10 Day Notice by filing an application for dispute resolution.

M.R. testified the Tenant has not paid rent for February 2019 and has since vacated the rental unit. There is insufficient evidence before me to find that the Tenant disputed the 10 Day Notice. As a result, pursuant to section 46(5) of the *Act*, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice.

Section 26(1) of the *Act* confirms a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

I find the Landlord has established an entitlement to a monetary award for unpaid rent for February 2019 in the amount of \$1,271.00.

The Landlord is also claiming \$100.00 to replace the broken blinds in the rental unit. The Landlord submitted a picture of the damaged blinds as well as a receipt supporting the cost of replacing the blinds. I find that it is more likely than not that the blinds were damaged during the tenancy and that the Tenant is responsible for cost of replacing the blinds. As such, I find that the Landlord has established an entitlement to \$100.00.

Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlord is entitled to 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 \$896.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$1,271.00
Replacement of Blinds:	\$100.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-(<i>\$575.00</i>)
TOTAL:	\$896.00

Conclusion

The Landlord is granted a monetary order in the amount of \$896.00. This order must be served on the Tenant as soon as possible. If the Tenant fails to comply the monetary order it 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: June 11, 2019

Residential Tenancy Branch