



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RE/MAX OF NANAIMO PROPERTY
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNDCL-S, MNDL-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, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67I
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and,
- authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended the hearing. The landlord had full opportunity to provide affirmed testimony, present evidence, and make submissions.

The tenant did not attend the hearing. I kept the teleconference line open for the duration of the hearing to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct participant code was provided to the tenant.

The landlord testified that they served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on May 29, 2019 to the forwarding address provided by the tenant. The landlord provided the Canada Post tracking number in support of service referenced on the first page of the decision. Based on the undisputed testimony of the landlord, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution pursuant to section 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The tenancy started on July 1, 2018. The tenancy was a fixed term tenancy with a stated end date of June 30, 2019. The monthly rent was \$1,750.00, due on the first day of each month. The tenant paid a \$875.00 security deposit which the landlord still holds. A condition inspection report was prepared on move-in.

The landlord testified that the tenant vacated the rental on May 9, 2019. The landlord testified that the tenant's rent payment for May 2019 was rejected by the landlord's financial institution for nonsufficient funds. The landlord testified that the tenant did not make any rent payment for June 2019.

The landlord testified that the rental unit was left in a severely damaged condition. The landlord provided multiple photographs showing wood slats attached to the walls throughout the property. In addition, the photographs show large amounts of damage to the appliances. The landlord provided repair quotes of \$7,740.00, \$8,440.00 and \$9,738.75 from different contractors. The landlord testified that the repairs have been completed and the repairs were paid by the landlord's insurance. However, the landlord seeks reimbursement of the \$2,500.00 deductible the landlord paid for this insurance claim.

The landlord also claims \$267.15 for electrician services to install a new hood fan which needed to be replaced. The landlord also claims \$238.50 for lawn cutting for May 2019

and June 2019 after the tenant vacated the rental unit. In addition, the landlord claims \$161.70 in plumbing fees for repair to the drain.

Further, the landlord claimed that the tenant owes utility fees. The landlord presented an electric bill for services from March 27, 2019 to May 7, 2019 showing charges of \$91.66. The landlord claims loss of rent from June 2019. The landlord testified that the property was not marketable until the repairs were completed on June 20, 2019. The landlord testified that they advertised the vacancy and they quickly found a new tenant after the repairs were completed and the new tenancy started on July 1, 2019.

The landlord also claims mailing costs of \$27.75 and reimbursement of the filing fee.

Analysis

The landlord is claiming damages resulting from the tenant's early termination of the fixed term tenancy and monetary compensation for damage to the rental unit. I will address each claim separately.

i. Damages for early termination of the fixed term tenancy

(a) Loss of rent

The landlord is seeking compensation for unpaid rent in May 2019 and loss of rent in June 2019 due to the tenant's early termination of the fixed term 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 from the landlord's unrefuted testimony that the tenant has not paid the May 2019 rent. Pursuant to section 7(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 \$1,750.00 for unpaid rent in May 2019.

In addition, I am satisfied by landlord's unrefuted testimony that the tenant did not pay any rent for June 2019. Further, based on the landlord's unrefuted testimony, I am satisfied that the rental unit was vacant until July 1, 2019 and the and that the landlord lost rent from this vacancy in June 2019.

I am also satisfied that the landlord's loss of rent directly resulted from the tenant's 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 June 30, 2019. 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 notice to end a fixed term tenancy on a date after the expiration of the fixed term. For these reasons, I find that the tenant's breach of the *Act* caused the landlord's loss of rent in June 2019.

I find that the amount of the landlord's loss of rent for June 2019 is \$1,750.00 based upon the landlord's undisputed testimony and the terms of the tenancy agreement.

I find that the landlord has adequately mitigated their loss by completing the extensive repairs caused by the tenant's damage to the rental unit by June 20, 2019 and then finding a new tenant by July 1, 2019. I am satisfied by the landlord's undisputed testimony that they attempted to find a new tenant as quickly as possible in the circumstances.

I find that the landlord is entitled to a monetary award of \$3,500.00 for unpaid rent of \$1,750.00 in May 2019 and loss of rent of \$1,750.00 in June 2019 due to tenant's early termination of the fixed term tenancy.

(b) Unpaid utilities

The landlord also requested reimbursement for the tenants' electric utility expenses. Based upon the landlord's undisputed testimony and the terms of the tenancy agreement, I find that the tenant had an obligation under the tenancy agreement to pay her electric utility expenses. As such, I find that tenant is obligated to reimburse the landlord for the electric utility expenses pursuant to section 7(1) of the *Act*.

The electric bill was for services provided from March 27, 2019 to May 7, 2019 when the tenant occupied the rental unit. Accordingly, I find that the tenant is responsible for the entire electric utility expense of \$91.66. I only grant the landlord a monetary order of \$91.66 for reimbursement of electric utilities.

(c) Lawn maintenance

The landlord also claims \$238.50 for lawn cutting for May 2019 and June 2019 after the tenant vacated the rental unit. *Residential Tenancy Policy Guideline* No. 1 states that a tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass. Accordingly, I find that the tenant was responsible for mowing the lawn during the tenancy.

Residential Tenancy Policy Guideline No. 3 states that, where a tenant ends a fixed-term tenancy early, "damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement." In this matter, I find that the landlord would not have been required to incur the expense of mowing the lawn at the rental unit for May and June 2019 if the tenant had not breached the tenancy agreement. Accordingly, I find that the tenant is responsible for the lawn cutting expenses in May and June 2019. I grant the landlord a monetary order of \$238.50 for reimbursement of law cutting expenses.

ii. Monetary compensation for damage to the rental unit

(a) Insurance deductible

The landlord claimed reimbursement of \$2,500.00 for the insurance deductible to make repairs to the property. Section 32(3) of the *Act* states that a tenant must compensate the landlord for damage caused by the actions or the neglect of the tenant. Based upon

the landlord's unrefuted testimony and the photographs, I find that the tenant has caused extensive damage to the rental unit. Further, I find that the landlord has mitigated their loss by making the repairs through an insurance claim. In addition, I find that the insurance deductible of \$2,500.00 was incurred by the repairs of the damage caused by the tenant. Accordingly, I grant the landlord a monetary order of \$2,500.00 for reimbursement of the insurance deductible.

(b) Electrician services

I find that the landlord incurred \$267.15 in electrician services to install a new hood fan which needed to be replaced because the tenant damaged the existing hood fan. I find that this expense was incurred repairing damage caused by the tenant. Accordingly, I grant the landlord a monetary order of \$267.15 for reimbursement of the electrician services.

(c) Plumbing services

I find that the landlord incurred \$161.70 in plumbing services to repair the drain. I find that this expense was incurred repairing damage caused by the tenant. Accordingly, I grant the landlord a monetary order of \$161.70 for reimbursement of the plumbing services.

iii. Mailing expenses

The landlord claimed \$27.75 for mailing expenses. I find that the landlord's litigation expenses, including mailing expenses, are not recoverable claims in Residential Tenancy Branch hearings. Accordingly, I shall deny this claim.

iv. Filing fee

Since the landlord has prevailed in this matter, I grant the landlord reimbursement of the \$100.00 filing fee from the tenant pursuant to section 72(1) of the *Act*.

v. Security deposit

I find that the landlord holds a security deposit of \$875.00 which may be deducted the damages owed by the tenant to the landlord pursuant to section 72(2) of the *Act*.

Based on the forgoing, I grant the landlord a monetary award of \$5,984.01, calculated as follows.

<u>Item</u>	<u>Amount</u>
Unpaid rent May 2019	\$1,750.00
Loss of rent June 2019	\$1,750.00
Utilities	\$91.66
Lawn maintenance	\$238.50
Insurance deductible	\$2,500.00
Electrician	\$267.15
Plumbing	\$161.70
Filing fee	\$100.00
Less: security deposit	-\$875.00
TOTAL	\$5,984.01

Conclusion

I grant the landlord a monetary order in the amount of **\$5,984.01**. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court to be enforced as an order of that 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: September 10, 2019

Residential Tenancy Branch