



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC MNR MNSD FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on June 9, 2019 and amended on June 26, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage;
- a monetary order for money owed or compensation for damage or loss;
- a monetary order for unpaid rent or utilities;
- an order that the Landlord be permitted to apply the security deposit held to any monetary award granted; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing and was accompanied by R.M., legal counsel. The Tenant attended the hearing and was assisted by D.W., a family member who provided evidence on behalf of the Tenant. The Landlord, Tenant, and D.W. provided a solemn affirmation at the beginning of the hearing.

The Landlord testified that the Notice of Dispute Resolution Proceeding package was served on the Tenant by registered mail. Canada Post documentation confirms delivery on June 19, 2019. The Tenant acknowledged, and I find, that the Tenant was served with and received the package on that date.

In addition, the Landlord testified that an Amendment to an Application for Dispute Resolution was served on the Tenant by registered mail on June 28, 2019. Canada Post documentation confirms service in this manner. The Tenant confirmed receipt. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. I find the Amendment to an Application for Dispute Resolution is deemed to have been received by the Tenant on July 3, 2019.

The Tenant submitted documentary evidence in response to the Application. The Tenant testified it was served on the Landlord by registered mail on July 30, 2019. The Landlord confirmed that the Tenant's documentary evidence was received on August 9, 2019. In the absence of other evidence of service, I find the Tenant's documentary evidence package was received by the Landlord on August 9, 2019.

No issues were raised with respect to service or receipt of the above documents during the hearing. The parties were in attendance and were prepared to proceed. The parties were provided with a full 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
4. Is the Landlord entitled to retain the security deposit held in partial satisfaction of the claim?
5. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted into evidence. It confirmed the tenancy began on December 20, 2018 and was expected to continue to August 19, 2019. Although the parties agreed the Tenant vacated the rental unit on June 1, 2019, they disagreed with regard to when notice was given by the Tenant. The parties agreed that rent in the amount of \$2,000.00 per month was due on the 20th day of each month. Despite what is indicated on the tenancy agreement, the parties agreed the Tenant paid a security deposit of \$1,000.00, which the Landlord holds.

The Landlord's claim is set out in the Application. Although not supported by a Monetary Order Worksheet, the claim is sufficiently articulated. First, the Landlord claimed \$500.00 for trash

removal. R.M. advised that this amount was an estimate based on the Tenant's request, made during the tenancy, that the Landlord remove it. R.M. confirmed the Landlord has not incurred any expense for trash removal.

On behalf of the Tenant, D.W. disagreed with this aspect of the claim. He testified that the rental unit was cleaned when the Tenant vacated and that no garbage was left behind.

Second, the Landlord claimed \$2,300.00 to repair damaged flooring. R.M. acknowledged that move-in and move-out condition inspections were not completed. However, he indicated that paragraph 10 of the tenancy agreement submitted into evidence confirms the Tenant was satisfied with the physical condition of the rental unit at the beginning of the tenancy. R.M. also referred to photographic evidence which depicts scratches in the hardwood floor. In further support, the Landlord submitted an estimate, dated June 4, 2019, which indicated the damaged areas need to be sanded and painted. R.M. confirmed the floor damage has not been repaired and that the Landlord has not incurred this expense.

On behalf of the Tenant, D.W. disagreed with this aspect of the claim. He testified again that the Landlord did not complete move-in and move-out condition inspection, and denied the floors were damaged during the tenancy. D.W. testified the damage was present when the Tenant moved in.

Third, the Landlord claimed \$6,500.00 - \$7,500.00 for lawn repairs. The Landlord relied on the estimate referred to above, which describes a need to remove existing grass, add top soil, and apply turf. R.M. referred to photographic evidence which depicts the condition of the lawn at the beginning and end of the tenancy. The photograph taken at the end of the tenancy depicts overgrown grass, but no other damage is evident. The Landlord also relied on paragraph 10 of the tenancy agreement to support the suggestion that the Tenant was obligated to "maintain the PREMISES...[and] pay for all repairs, replacements and damages, whether or not caused by the act or neglect of the TENANT." R.M. acknowledged the work has not been completed and that the Landlord has not incurred this expense.

On behalf of the Tenant, D.W. questioned the timing of the photograph depicting the overgrown grass, and testified the rental property was clean at the end of the tenancy.

Fourth, the Landlord claims \$8,000.00 in legal fees. The Landlord relies on paragraph 9 of the tenancy agreement which states:

If the TENANT fails to comply with the terms of this Lease, the LANDLORD may take any required action and charge the cost, including reasonable attorney fees, to the TENANT.

[Reproduced as written.]

In addition, the Landlord submitted a demand letter dated June 3, 2019. The letter appears to respond to claims made by the Tenant and demands immediate payment of \$8,000.00 in legal expenses. R.M. advised that this was a flat fee for services provided for this and a previous hearing, and that the claim would likely have been greater if he charged an hourly rate. No invoice was submitted into evidence.

On behalf of the Tenant, D.W. suggested the amount sought was “crazy” and that the Tenant should not have to pay.

Fifth, the Landlord claims \$6,000.00 in unpaid rent. Specifically, the Landlord testified the Tenant gave notice on May 6, 2019 and vacated the rental unit on June 1, 2019. However, rent was not paid when due on May 20, June 20, and July 20, 2019. R.M. submitted the agreement was for a fixed-term ending on August 19, 2019, and that the Tenant was not entitled to end the tenancy before that date.

Sixth, the Landlord claims \$600.00 for the 3 months for which rent remains unpaid. The Landlord relies on paragraph 3 of the tenancy agreement which states: “The TENANT must pay a late charge of \$200 for each payment that is more than five (5) days late.”

On behalf of the Tenant, D.W. advised the Tenant gave notice to end the tenancy on May 1, 2019, and acknowledged the Tenant vacated the rental unit on June 1, 2019.

Finally, the Landlord claimed \$100.00 in recovery of the filing fee, and an order permitting the Landlord to retain the security deposit held in partial satisfaction of the claim.

Analysis

Based on the 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*. 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.

With respect to the Landlord's claim for \$500.00 for trash removal, I find there is insufficient evidence before me to grant the relief sought. On behalf of the Landlord, R.M. acknowledged the amount claimed was based on an estimate only and that the expense was not incurred. Therefore, this aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$2,300.00 to repair damaged flooring, I find there is insufficient evidence before me to grant the relief sought. Specifically, I am not satisfied that the damage depicted in the Landlord's photographic evidence was caused by the Tenant during the tenancy. The damage was not supported by a condition inspection report confirming the condition of the flooring at the beginning or end of the tenancy. I also note that R.M. confirmed the amount claimed was based on an estimate and that the expense has not been incurred. Therefore, this aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$6,500.00 - \$7,500.00 for lawn repairs, I find there is insufficient evidence before me to grant the relief sought. I note that R.M. confirmed the amount claimed was based on an estimate and that the expense has not been incurred. However, Policy Guideline #16 confirms an arbitrator may award nominal damages when there has been no significant loss, or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. In this case, I am satisfied that the Tenant was responsible to maintain the lawn under the terms of the tenancy agreement but did not do so. As a result, I accept that the Landlord suffered a loss. Therefore, I find it appropriate in the circumstances to grant the Landlord nominal damages for lawn repairs in the amount of \$200.00.

With respect to the Landlord's claim for \$8,000.00 in legal fees, I find there is insufficient evidence before me to grant the relief sought. While parties to a dispute are obviously entitled to obtain legal advice, this dispute resolution process is intended to be an affordable forum for parties to resolve disputes. Further, I note there is no provision in the *Act* that empowers the director to award legal fees. Therefore, this aspect of the claim is dismissed.

With respect to the Landlord's claim for \$6,000.00 in unpaid rent, I find the Landlord is entitled to recover unpaid rent in the amount of \$2,000.00, which was due on May 20, 2019. I find the tenancy agreement was for a fixed term, ending on August 19, 2019. Further, I find, pursuant to section 45 of the *Act*, that the Tenant was not entitled to end the tenancy before the end of the fixed term. However, the Landlord had an obligation under section 7 of the *Act* to take

reasonable steps to minimize her losses on receipt of the Tenant's notice. There was insufficient evidence put before me of the Landlord's efforts in that regard. Rather, R.M. merely advised that the Landlord was unable to re-rent the unit until after August 19, 2019. As a result, I find it is reasonable in the circumstances to grant the Landlord rent that was due on May 20, 2019. The Landlord had from May 6, 2019 to take steps to re-rent the unit but provided insufficient evidence of mitigation. The Landlord is granted a monetary award in the amount of \$2,000.00.

With respect to the Landlord's claim for \$600.00 in late charges, section 7 of the Residential Tenancy Regulation confirms a landlord may charge an administration fee of not more than \$25.00 for the late payment of rent. However, this must be provided for in the tenancy agreement. I accept that the tenancy agreement submitted into evidence provides for a late payment fee. However, this payment cannot exceed \$25.00. As I have determined the Tenant is entitled to recover rent that was due on May 20, 2019 but has not been paid, I find it is appropriate in the circumstances to grant the Landlord a monetary award in the amount of \$25.00.

Having been partially successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. I also 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 \$1,325.00, which has been calculated as follows:

Claim	Allowed
Lawn repairs (nominal damages):	\$200.00
Unpaid rent:	\$2,000.00
Late payment fee:	\$25.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$1,000.00)
TOTAL:	\$1,325.00

Conclusion

The Landlord is granted a monetary order in the amount of \$1,325.00. The order 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: September 24, 2019

Residential Tenancy Branch