



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JONNA HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNDL-S MNRL-S

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on July 9, 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 Landlord and the Tenant attended the hearing at the appointed date and time and provided affirmed testimony.

The Landlord testified that he served his Application and documentary evidence package to the Tenant by registered mail on July 15, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Tenant confirmed that she did not submit any documentary evidence in preparation for the hearing.

The parties were 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 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

The parties testified and agreed to the following; the tenancy began on April 30, 2019. The Tenant was required to pay rent in the amount of \$1,195.00 which was due on the last day of each month. The Tenant paid a security deposit in the amount of \$550.00 which the Landlord continues to hold. The tenancy ended on July 6, 2019 after the Tenant vacated the rental unit.

The Landlord testified that the Tenant failed to pay rent in the amount of \$1,195.00 when due for July 2019. The Landlord stated that he subsequently served a 10 Day Notice to End Tenancy dated July 2, 2019 (the "10 Day Notice") by posting it to the Tenant's door on the same date. The Tenant confirmed receipt.

The Landlord stated that the Tenant moved out of the rental unit on July 6, 2019 and has yet to pay rent for the month of July 2019. The Landlord stated that he was unable to re-rent the rental unit until August 1, 2019, therefore, the Landlord is seeking monetary compensation in the amount of \$1,195.00 for July 2019 rent.

In response, the Tenant stated that she felt entitled to withholding July 2019 rent as she felt harassed by the Landlord throughout the tenancy. The Tenant stated that she was forced to leave the rental unit after the Landlord's agent asked her to move out on June 29, 2019. The Tenant complied with this demand and moved out of July 6, 2019 as a result.

The Landlord is seeking monetary compensation in the amount of \$126.00 for carpet cleaning. The Landlord stated that the parties agreed to certain house rules at the start of the tenancy. The Landlord stated that one of the rules required the tenant to have the carpets in the rental unit professionally cleaned at the end of the tenancy. The Tenant stated that the condition of the rental unit was better at the end of the tenancy than it

was at the start of the tenancy, therefore, she doesn't feel as though she should have had the carpets cleaned.

If successful, the Landlord is also seeking repayment for the filling fee in relation to the Application.

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*. 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.

In relation to the Landlord's application for a monetary order for unpaid rent, I find;

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 accept that the parties agreed that the Tenant did not pay rent to the Landlord when due for July 2019. I find that there is no evidence before me to indicate that the Tenant had a right to deduct all or a portion of the rent. I find that if the Tenant had some concerns surrounding the tenancy, she could have made an application for dispute resolution at that time, seeking a remedy under the *Act*. I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$1,195.00.

The Landlord is also seeking \$126.00 for carpet cleaning. In this case, I find that the Landlord provided insufficient evidence to demonstrate that the carpets required cleaning as a result of the Tenant breaching the *Act*. Furthermore, the Landlord provided no evidence to support the value of the loss, or that the parties had agreed that the Tenant was required to employ a professional carpet cleaner at the end of the tenancy. As such, I dismiss this portion of the Landlord's claim without leave to reapply.

Having been partially successful, I 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 \$745.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$1,195.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-(<i>\$550.00</i>)
TOTAL:	\$745.00

Conclusion

The Tenant had breached Section 26 of the Act by not paying rent when due to the Landlord. The Landlord is granted a monetary order in the amount of \$745.00. This order must be served on the Tenant as soon as possible. If the Tenant fails to comply with 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: October 23, 2019

Residential Tenancy Branch