



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KWAN-WU HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISIONS

Dispute Codes

MNDL-S, MNRL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on July 11, 2019, in which the Landlord sought monetary compensation from the Tenants for unpaid rent and damage to the rental unit, authority to retain their security deposit and recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for 1:30 p.m. on October 24, 2019. Only the Landlord's Agent, J.W., called into the hearing. He gave affirmed testimony and was provided the opportunity to present their 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 1:56 p.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's Agent 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. J.W., testified that he served the Tenants with the Notice of Hearing and the Application on July 19, 2019 by registered mail to the forwarding address provided by the Tenants. A copy of the registered mail tracking number for both packages is provided on the unpublished cover page of this my Decision.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 July 24, 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's Agent confirmed his email address during the hearing as well as his understanding that this Decision would be emailed to them.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. What should happen with the Tenants' security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

A copy of the residential tenancy agreement was provided in evidence and which provided that the one year fixed term tenancy began October 1, 2018 and was to end of September 30, 2018. Monthly rent was payable in the amount of \$1,995.00 and the Tenants paid a security deposit of \$997.50.

The Tenants failed to pay the rent and the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on June 11, 2019, indicating that the sum of \$1,330.00 was outstanding.

The Tenants vacated the rental unit on June 22, 2019. The Landlord's agent confirmed that they sought monetary compensation for unpaid rent from June 1-22, 2019 only as the Tenants accepted the Notice and vacated by the effective date.

The Landlord filed a Monetary Orders Worksheet in which the following was claimed:

June unpaid rent	\$798.00
Cleaning fees	\$370.93
Estimated carpet replacement	\$750.00

During the hearing before me the Landlord's agent stated that the carpets were not replaced as the Landlord was able to clean the carpets and replace the underlay at a cost of \$412.99.

The Landlord also sought the sum of \$35.00 for the N.S.F. fee. The Landlord's authority to claim this amount was provided for in paragraph 1 of the Addendum to the residential tenancy agreement which was provided in evidence before me.

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.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

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 evidence that the Tenants failed to pay the full rent for June 2019. Section 26 of the *Residential Tenancy Act* provides that a Tenant must pay rent when rent is due, even in the event the Landlord is in violation of the *Act*. Although there are limited circumstances where a tenant may withhold rent (including when they have: overpaid a security deposit; paid rent pursuant to an illegal rent increase; have paid for emergency repairs pursuant to section 33 of the *Act*; or, an Arbitrator has ordered they may withhold rent) I find those circumstances do not exist in this case. I therefore find the Landlord is entitled to recover the unpaid rent.

A landlord may recover an N.S.F. fee if such a fee is specifically provided for in the tenancy agreement; as noted previously in this my Decision, in this case the addendum to the agreement provides that the Landlord may collect an N.S.F. fee. As such I find the Landlord is entitled to recovery this fee from the Tenants.

I find that the Tenants did not clean the rental unit as required by section 37. I accept the Landlord's agent's testimony that they were able to salvage the carpet by replacing the underlay and cleaning the carpet. In doing so I find the Landlord mitigated their losses as required by section 7 of the *Act*. The Landlord is therefore entitled to recover the amounts spent for cleaning of the rental unit, cleaning of the carpet and replacement of the carpet underlay.

Having been substantially successful in this application, I find the Landlord is entitled to recovery of the filing fee pursuant to section 72 of the *Act*.

Conclusion

The Landlord is entitled to monetary compensation in the amount of **\$1,716.92** calculated as follows:

June unpaid rent	\$798.00
N.S.F. fee	\$35.00
Cleaning fees	\$370.93
Carpet cleaning and replacement of underlay	\$412.99
Filing fee	\$100.00
Total claim	\$1,716.92

Pursuant to section 38 and 72 of the *Act* I grant the Landlord authority to retain the Tenants' \$997.50 security deposit towards the amounts awarded and I grant the Landlord a Monetary Order for the balance due in the amount of **\$719.42**. This Monetary Order must be served on the Tenants and may 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: October 29, 2019

Residential Tenancy Branch