



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REGENT PARK PINNACLE REALTY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNDC MNR MNSD FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on August 1, 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 was represented at the hearing by N.L., an agent. The Tenant attended the hearing and was accompanied by G.C., who identified himself as a tenant but was not named in the tenancy agreement submitted into evidence. All in attendance provided a solemn affirmation at the beginning of the hearing.

On behalf of the Landlord, N.L. testified that the Notice of Dispute Resolution Hearing package was served on the Tenant by registered mail on August 14, 2019. A Canada Post registered mail receipt was submitted in support. N.L. testified the package was sent to a forwarding address provided by the Tenant. The Tenant agreed the address was correct but testified it was not received. I find it is more likely than not that the Tenant was sufficiently served in accordance with the *Act*. 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 Tenant is deemed to have received these documents on August 19, 2019.

The Tenant submitted documentary evidence in response to the Application. The Tenant testified it was served on the Landlord in person. N.L. acknowledged receipt. No issues were raised with respect to service or receipt of the Tenant's documentary evidence. Therefore, pursuant to section 71 of the *Act*, I find the documentary evidence package was sufficiently served for the purposes of the *Act*.

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 between the parties confirms the fixed-term tenancy began on May 18, 2019 and was expected to continue to May 31, 2020. However, the parties agreed the tenancy ended on or about July 19, 2019, at which time the Tenant vacated the rental unit. During the tenancy, rent in the amount of \$1,900.00 per month was due on the first day of each month. The Tenant paid a security deposit in the amount of \$950.00, which the Landlord holds.

The claims for repairs and cleaning were supported by a Condition Inspection Report (the "Report"). The Report confirms the move-in condition inspection occurred on May 17, 2019; the move-out condition inspection took place on July 19, 2019. The Tenant attended the move-in condition inspection and signed to confirm that she agreed the report fairly represented the condition of the rental unit at the beginning of the tenancy; the Tenant did not attend the move-out condition inspection.

The Landlord's claim was summarized in a Monetary Order Worksheet dated August 1, 2019. First, the Landlord claims \$1,900.00 for unpaid rent due on July 1, 2019. In support, the Landlord submitted a 10 Day Notice for Unpaid Rent or Utilities dated July 17, 2019, and a copy of a cheque dated July 1, 2019 stamped "NON-NEGOTIABLE".

In reply, the Tenant acknowledged rent was not paid on July 1, 2019. G.C. testified that they vacated the rental unit on July 15, 2019 because it became "unliveable" within weeks of moving in. He described a decrease in water pressure and air quality, and odours. G.C. testified that he and the Tenant should not have to pay rent in these circumstances. In response, N.L. testified she was never made aware of an issue with water pressure but acknowledged a suggestion made during the tenancy that there was a grow-op in the rental property.

Second, the Landlord claims \$700.00 for a move-in fee and two fines imposed by the strata. The Landlord submitted a copy of a statement from the strata dated July 19, 2019. The statement itemizes a move-in fee (\$300.00), a fine for unauthorized move-in (\$200.00), and a fine for an unauthorized move-out (\$200.00). Although N.L. testified that the tenant was sent a Form K for signature, a copy was not submitted into evidence.

In reply, the Tenant and G.C. testified they had no recollection of having received or signed a Form K and disagreed they should have to pay the fee and fines claimed by the Landlord.

Third, the Landlord claimed \$448.00 paid to clean the rental unit at the end of the tenancy. N.L. testified that it appeared the Tenant had moved out in a hurry and that the unit needed to be cleaned so it could be re-rented. In support, the Landlord submitted an invoice dated July 26, 2019 in the amount claimed. N.L. acknowledged there were no photographs depicting the condition of the rental unit. The Report does not disclose any issue with cleanliness when the tenancy began.

In reply, G.C. disagreed with respect to the condition of the rental unit and testified that he “scrubbed” the rental unit at the end of the tenancy. He also testified that the rental unit needed to be cleaned at the beginning of the tenancy.

Fourth, the Landlord claimed \$80.00 for the cost to have a handyman repair a closet door and shelf. The Landlord submitted a photograph of the bi-fold closet door leaned against the wall and wire shelving on the floor beside it. The Landlord also submitted a hand-written receipt dated August 1, 2019 in the amount claimed. The Report does not disclose any issue with the closet door or shelf when the tenancy began.

In reply, G.C. acknowledged that the door was not on the track but stated it just needed to be “popped on”.

Fifth, the Landlord claims \$135.42 to replace a fridge crisper. The Landlord submitted a photograph of the broken fridge crisper. The Landlord also submitted a receipt dated July 31, 2019 in the amount claimed. The Report does not disclose any issue with the fridge crisper when the tenancy began.

In reply, G.C. testified that he does not have any specific recollection about the condition of the crisper.

Sixth, the Landlord claims unpaid rent for the period from August 1-15, 2019. According to N.L., the Landlord was not able to re-rent the unit until August 16, 2019.

In reply, G.C. acknowledged that no rent was paid for the period being claimed. He described the entire situation as “unfortunate”.

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 \$1,900.00 for unpaid rent due on July 1, 2019, section 26 of the *Act* confirms a tenant must pay rent when due, whether or not the landlord complies with the *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. In this case, I find there is insufficient evidence before me to conclude the Tenant had a right under the *Act* to deduct rent. The decreased water pressure and air quality likely could have been addressed by the Landlord. If the Landlord did not address the Tenant's concerns within a reasonable period, the matter could have been made the subject of an application for dispute resolution. Instead, the Tenant elected to vacate the rental unit

before the end of the fixed term contrary to section 45(2) of the *Act*. I grant the Landlord a monetary award for unpaid rent in the amount of \$1,900.00.

With respect to the Landlord's claim for \$700.000 for a move-in fee and two fines imposed by the strata, I find there is insufficient evidence to grant the relief sought. N.L. was unable to refer me to a signed Form K document which describes a tenant's responsibilities when renting a unit in a strata building. Therefore, I find that this aspect of the Application is dismissed.

With respect to the Landlord's claim for \$448.00 to clean the rental unit, section 37(2) of the *Act* confirms that a tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. A rental unit does not need to be pristine and ready to rent to the next tenant. While I accept that the Landlord incurred an expense for cleaning, I find there was insufficient evidence before me to conclude the unit was not reasonably clean, which may have been supported by documentary evidence. Therefore, this aspect of the Application is dismissed.

With respect to the Landlord's claim for \$80.00 for the cost to have a handyman repair a closet door and shelf, I find there is sufficient evidence before me to grant the relief sought. This aspect of the Landlord's claim was supported by photographic evidence of the damage, an invoice for the cost of the repair, and the Report. I grant the Landlord a monetary award for the closet and shelf repair in the amount of \$80.00.

With respect to the Landlord's claim for \$135.42 to replace a fridge crisper, I find there is sufficient evidence before me to grant the relief sought. This aspect of the Landlord's claim was supported by photographic evidence depicting the damage, an invoice for the replacement crisper drawer, and the Report. The Tenant and G.C. offered no reasonable explanation regarding the damage. I grant the Landlord a monetary award for the crisper replacement in the amount of \$135.42.

With respect to the Landlord's claim for \$950.00 for unpaid rent for the period from August 1-15, 2019, I find there is sufficient evidence before me to grant the relief sought. I accept the testimony of N.L. who stated the Landlord was unable to re-rent the unit until August 16, 2019. Accordingly, I find the Landlord's request to recover one half of a month's rent to be reasonable. I grant the Landlord a monetary award for unpaid rent for the period from August 1-15, 2019 in the amount of \$950.00.

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 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 \$2,215.42, which has been calculated as follows:

Claim	Allowed
Unpaid rent (July 1-31, 2019):	\$1,900.00
Handyman repairs:	\$80.00
Crisper replacement:	\$135.42
Unpaid rent (August 1-15, 2019):	\$950.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$950.00)
TOTAL:	\$2,215.42

Conclusion

The Landlord is granted a monetary order in the amount of \$2,215.42. 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: November 26, 2019

Residential Tenancy Branch