



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL R.E.S. LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNDCL-S MNRL-S

Introduction

On October 7, 2019 the Landlord submitted an Application for Dispute Resolution (the “Application”), seeking relief pursuant to the *Residential Tenancy Act* (the “Act”) for the following:

- a monetary order for unpaid rent;
- a monetary order for damage or compensation;
- an order granting authorization to retain the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on February 7, 2020 as a teleconference hearing. The Landlord’s Agent attended the hearing at the appointed date and time and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord’s Agent and I were the only persons who had called into this teleconference.

The Landlord’s Agent testified the Application and documentary evidence package was served to the Tenant by registered mail on October 28, 2019. Based on the oral and written submissions of the Applicants, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on November 2, 2019, the fifth day after their registered mailing. The Tenant did not submit documentary evidence in response to the Application.

The Landlord’s Agent was 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 or compensation, pursuant to Section 67 of the *Act*?
3. Should the Landlord be authorized to apply the security deposit against their claim, in accordance with Section 72 of the *Act*?
4. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord's Agent stated that the tenancy began on June 3, 2016. During the tenancy, the Tenant was required to pay rent in the amount of \$1,049.00 to the Landlord which was due on the first day of each month. The Landlord's Agent stated that the Tenant paid a security deposit in the amount of \$475.00 which the Landlord continues to hold. The Landlord's Agent stated that the tenancy ended on September 30, 2019.

The Landlord's Agent stated that the Tenant provided the Landlord with her notice to end tenancy by placing it in the Landlord's mailbox, which was received by the Landlord on September 20, 2019. The Landlord's Agent stated that the Tenant's notice to end tenancy was dated August 30, 2019 with an effective vacancy date of September 23, 2019. The Landlord's Agent stated that the mailbox was checked several times throughout the first week of September 2019 as the Landlord was collecting the rent cheques and the Landlord did not receive the Tenant's Notice at that time.

The Landlord's Agent stated that the Tenant did not provide the Landlord sufficient time to find a replacement occupant to move into the rental unit. As such, the Landlord was unable to re-rent the rental unit for the month of October 2019. The Landlord is therefore seeking compensation in the amount of \$1,049.00 for the loss of rent for the month of October 2019.

The Landlord's Agent stated that a move out condition inspection was completed between the parties on September 30, 2019. The Landlord's Agent stated that it was

noted that the rental unit required further cleaning as the stove, fridge, curtains and balcony were left dirty. The Landlord is claiming \$165.00 to compensate for the cleaning cost. The Landlord provided a copy of the condition inspection report, photographic evidence, and a breakdown of the costs associated with the cleaning.

If successful, the Landlord is also seeking the return of the filing fee paid to make the Application.

Analysis

Based on the uncontested 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.

According to Section 45 (1) of the *Act*, a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that;

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case, the Landlord's Agent stated that the Landlord received the Tenant's notice to end tenancy on September 20, 2019 after it had been placed in the Landlord's mailbox. The Tenant's notice to end tenancy was dated August 30, 2019 with an effective vacancy date of September 23, 2019.

Section 90 of the Act explains that if a document is left in the mailbox, the document is deemed served on the third day after it is left.

I accept that the Landlord did not receive the Tenant's notice to end tenancy until September 20, 2019. I find that the Tenant's notice is date August 30, 2019 and was placed in the Landlord's mailbox. According to Section 90 of the *Act*, the Tenant would have needed to deliver the notice to end tenancy to the Landlord no later than August 28, 2019. As such, I find that the Tenant ended the tenancy early, without providing the Landlord with proper notice pursuant to Section 45(1) of the *Act*. I find that the Landlord has established an entitlement to compensation in the amount of \$1,049.00.

The Landlord is also claiming \$165.00 in relation to further cleaning required in the rental unit. The Landlord provided a copy of the condition inspection report, photographic evidence, as well as a monetary break down of cost associated with cleaning, which all indicate that the rental unit required further cleaning. As such, I find that the Landlord is entitled to monetary compensation in the amount of \$165.00.

In light of the above, I find that the Landlord has established an entitlement to compensation for loss of rent and cleaning in the amount of \$1,214.00.

Having been successful, I find the Landlord is entitled to recover the filing fee paid to make the Application. I also find it appropriate in the circumstances to order that the Landlord 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 \$839.00, which has been calculated as follows:

Claim	Amount
Loss of Rent	\$1,049.00
Cleaning	\$165.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-(<i>\$475.00</i>)
TOTAL:	\$839.00

Conclusion

The Landlord is granted a monetary order in the amount of \$839.00. The order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of BC (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: February 07, 2020

Residential Tenancy Branch