



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPITAL REGION HOUSING
CORPORATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL, MNRL-S, OPR, MNDL-S

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on January 8, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

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

The hearing was scheduled for 11:00 A.M. on March 12, 2020 as a teleconference hearing. K.K., K.K., and M.C. appeared on behalf of the Landlord and provided affirmed testimony. No one appeared for the Tenants. The conference call line remained open and was monitored for 20 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 Agents and I were the only persons who had called into this teleconference.

The Landlord's Agents testified the Application and documentary evidence package was served to the Tenants by registered mail on January 17 and February 21, 2020. Copies of the Canada Post registered mail receipts were submitted in support. Based on the oral and written submissions of the Landlord's Agents, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenants are deemed to have been served with the Application and documentary evidence on January 23 and February 26, 2020, the fifth day after their registered mailings. The Tenants did not submit documentary evidence in response to the Application.

The Landlord's Agents 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 Residential Tenancy Branch Rules of Procedure (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 an order of possession for unpaid rent, pursuant to Section 46 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to a monetary order for damage, compensation or loss, pursuant to Section 67 of the *Act*?
4. Is the Landlord entitled to retain the security deposit, pursuant to Section 38 of the *Act*?
5. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord's Agents testified that the tenancy began on October 25, 2019. The Landlord's Agents stated that the Tenants are required to pay rent in the amount of \$1,750.00 which is due to the Landlord on the first day of each month. The Landlord's Agents stated that the Tenants paid a security deposit in the amount of \$875.00 and a pet damage deposit in the amount of \$875.00 which the Landlord continues to hold.

The Landlord's Agents testified the Tenants did not pay rent in the amount of \$1,750.00 when due on December 1, 2019. Subsequently, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent, dated December 13, 2019 (the "10 Day Notice") with an effective vacancy date of December 23, 2019. The Landlord stated that the 10 Day Notice was served to the Tenants posting it to their door on December 13, 2019.

The Landlord's Agents testified that the Tenants failed to pay the outstanding balance of rent for December 2019. The Landlord's Agents stated that they received a rent payment in the amount of \$1,750.00 from the Tenants on January 16, 2020 and only a partial rent payment in the amount of \$875.00 on February 20, 2020. The Landlord testified that the Tenants failed to pay rent when due for March 2020 as well. The

Landlord is seeking a monetary order in the amount of \$4,375.00 for unpaid rent. The Landlord is also seeking an order of possession based on the unpaid rent.

The Landlord's Agents stated that the Tenants are required to pay \$30.00 for parking each month. The Landlord's Agents stated that the Tenants failed to pay their parking fees for November, December 2019, January, February, and March 2020 in the amount of \$160.00. The Landlord provided a ledger in support.

Lastly, the Landlord is claiming \$1,791.76 in relation to broken doors found in the rental unit. The Landlord's Agents stated that the Tenants were involved in an altercation on November 15, 2019 which caused damage on the rental unit. The Landlord's Agents provided a copy of the invoice in support of the cost associated with repairing the doors.

If successful, the Landlord is also seeking repayment for the filing fee in relation to the Application. As noted above, the Tenants did not attend the hearing to dispute the Landlord's evidence.

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 Tenants. 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.

Section 46 of the *Act* states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the Tenant receives the notice.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Section 46(5) says that if a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

Based on the oral testimony from the Landlord's Agents and in the absence of evidence to the contrary, I find that the 10 Day Notice was served to the Tenants by posting it to the Tenants' door on December 13, 2019. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 3 days later. I find the Tenants are deemed to have received the 10 Day Notice on December 16, 2019. Accordingly, pursuant to section 46(4) of the *Act*, the Tenants had until December 21, 2019, to either pay rent in full or dispute the 10 Day Notice by filing an application for dispute resolution.

The Landlord's Agents testified the Tenants did not pay the December 2019 rent and failed to pay rent in the amount of \$875.00 for February and paid no rent for March 2020. The Landlord's Agents stated that currently the Tenants have an outstanding balance of rent owing in the amount of \$4,375.00 and continue to reside in the rental unit. There is no evidence before me to find that the Tenants disputed the 10 Day Notice. As a result, pursuant to section 46(5) of the *Act*, I find the Tenants are conclusively presumed to have accepted the tenancy ended on the corrected effective date of the 10 Day Notice, December 26, 2019. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenants.

There is no evidence before me to indicate that the Tenants had a right to deduct all or a portion of the rent. I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$4,375.00.

In relation to the outstanding parking fees owed to the Landlord, I find that the Landlord has established an entitlement to a monetary award in the amount of \$160.00.

Lastly, in relation to the Landlord's claim for \$1,791.76, I find that the Landlord has provided sufficient evidence to support that the Tenants caused damage to the doors in the rental unit which required repairs. As such, I find that Landlord is entitled to monetary compensation in the amount of \$1,791.76.

Having been successful, I also 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 and pet damage deposits 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 \$4,676.76, which has been calculated as follows:

Claim	Amount
Unpaid Rent:	\$4,375.00
Parking Fees:	\$160.00
Repairs:	\$1,791.76
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$1,750.00)
TOTAL:	\$4,676.76

Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after it is served on the Tenants. This should be done as soon as possible. If the Tenants fail to comply with the order of possession it may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$4,676.76. This order must be served on the Tenants as soon as possible. If the Tenants fail to comply 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: March 13, 2020

Residential Tenancy Branch