



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL, MNRL-S

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended the hearing and had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional eleven minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

The landlord provided affirmed testimony that the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on October 29, 2020 and deemed received by the tenant under section 90 of the *Act* five days later, that is, on November 4, 2020. The landlord filed a copy of the mailing receipt

sent to the tenant's forwarding address which was provided to the landlord on October 24, 2019 by the tenant during a text exchange at numbers normally used by the parties.

The landlord provided the Canada Post Tracking Number in support of service to which I refer on the cover page. Pursuant to sections 89 and 90, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution on November 4, 2020.

Issue(s) to be Decided

Is the landlord entitled to:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The landlord provided undisputed testimony as the tenant did not attend the hearing.

The landlord stated that the month-to-month tenancy agreement with the tenant began on June 14, 2014 and ended when the tenant vacated without notice on October 17, 2020. Rent was \$900.00 a month payable at the first of the month. At the beginning of the tenancy, the tenant provided a security deposit in the amount of \$425.00 which is held by the landlord. The tenant has not provided written authorization to the landlord to retain the deposit. As referenced above, the tenant provided her forwarding address to the landlord in writing on October 24, 2019.

The landlord submitted a copy of the tenancy agreement as evidence.

The parties signed a condition inspection report at the beginning of the tenancy which indicated that the unit was in good condition in all material respects. A copy of the report was submitted.

When the tenant vacated the unit, the landlord testified that damage was discovered

caused by the tenant including a severely scratch door and damaged drywall including a hole in the drywall. The landlord submitted photographs in support of these observations which were also recorded in the Condition Inspection Report on moving out signed by the tenant's daughter, a copy of which was submitted as evidence.

The landlord submitted an estimate of costs to carry out repairs in the amount of \$1,050.00 dated October 27, 2019. The landlord stated that he only requested to be reimbursed in the amount of \$425.00, being the security deposit held by him; the landlord stated that he did not realize he could claim more than the amount of the security deposit.

The landlord testified that the tenant did not pay rent due for the final month of the tenancy, October 2019.

The landlord requested reimbursement of the filing fee.

The landlord clarified the landlord's claim as follows:

ITEM	AMOUNT
Repairs	\$425.00
Outstanding rent October 2019	\$900.00
Reimbursement of the filing fee	\$100.00
(Less security deposit)	(\$425.00)
TOTAL CLAIM	\$1,000.00

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

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.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a

party violating the Act, regulations or a tenancy agreement.

Section 7(1) of the Act provided 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.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

1. The claimant must prove the existence of the damage or loss.
2. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.
3. Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.
4. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award

I have considered all the evidence submitted by the landlord, including the estimate, the photographs showing the unit needed repairs, and the condition inspection report on moving in and moving out in which the tenant, through her daughter, agreed the unit was damaged as claimed by the landlord.

Considering the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities with respect to the claim for repairs. I accept the landlord's credible and supported evidence that the unit needed repairs when the tenant vacated, the tenant is responsible for the damage, the landlord will likely incur more than \$425.00 in expenses, the landlord took all reasonable steps to mitigate expenses and the landlord did not claim full compensation in his Application.

I find the damage is more than 'reasonable wear and tear'. In the absence of any contrary evidence, I find the landlord is entitled to a monetary award in the amount requested for this aspect of the claim.

Rent

The landlord testified the tenancy was month-to-month. For a month-to-month, or periodic tenancy agreement, a tenant must serve written notice to end the tenancy and assure that it is received at least one month before the effective date of the notice and before the day that rent is due.

As the tenant failed to provide the required notice, the tenant is responsible to reimburse the landlord for rent for the month of October 2019. I am satisfied based on the landlord's testimony and evidence, that the tenant vacated the unit half way through the month, and it is reasonable that the unit would remain vacant for the remainder of the month.

I accordingly allow the landlord reimbursement of \$900.00 representing rent for one month notice period, that is, the month of October 2019.

The landlord is authorized to apply the security deposit to the award under section 72.

As the landlord has been successful in this matter, I award the landlord reimbursement of the filing fee in the amount of \$100.00.

I grant a monetary order to the landlord in the amount of **\$1,625.00**. My award to the landlord is summarized as follows:

ITEM	AMOUNT
Repairs	\$425.00
Outstanding rent October 2019	\$900.00
Reimbursement of the filing fee	\$100.00
(Less security deposit)	(\$425.00)
TOTAL AWARD	\$1,000.00

Conclusion

The landlord is entitled to a monetary order in the amount of **\$1,000.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) to be enforced as an Order of that Court. 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 17, 2020

Residential Tenancy Branch