



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution, filed on November 14, 2019, in which the Landlords sought monetary compensation from the Tenant for unpaid rent and damage to the rental unit, authority to retain the Tenant's security deposit and recovery of the filing fee.

The hearing of the Landlords Application was scheduled for teleconference at 1:30 p.m. on April 7, 2020. Only the Landlords called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 1:52 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 Landlords and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlords' hearing package. The Landlord, W.C., testified that they served the Tenant with the Notice of Hearing and the Application on November 22, 2019 by registered mail. The Landlord stated that due to the volume of evidence provided they sent two packages by registered mail on the same date. A copy of the registered mail tracking number for both packages is provided on the unpublished cover page of this my Decision.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 Tenant was duly served as of November 27, 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 Landlords' submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlords and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Landlords confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenant?
2. What should happen with the Tenants' security deposit?
3. Should the Landlord recover the filing fee paid for this Application?

Background and Evidence

The Landlord testified that the tenancy began October 26, 2018. Monthly rent was \$1,800.00 per month. The Tenant paid a \$900.00 as a security deposit which the Landlords continue to hold.

The Landlord stated that the Tenant called the Landlord on September 11, 2019 and told the Landlords that she wanted to move out by September 30, 2019.

The Landlord sought monetary compensation for loss of rent for October 2019 in the amount of \$1,800.00 based on the fixed term tenancy, the date the Tenant provided notice to end her tenancy, as well as the condition of the rental unit.

The Landlords also sought the cost to clean and repair the rental unit. In support of their claim, they provided numerous photos of the rental unit and invoices for the costs incurred, as well as estimated costs.

The Landlords also sought monetary compensation for unpaid utilities. In support they provided copies of the relevant invoices.

The details of the Landlords' claim were itemized in a Monetary Orders Worksheet which was filed in evidence before me and which indicated the Landlords sought compensation for the following:

Cleaning supplies	\$32.82
Yard cleaning and junk removal	\$400.00
House cleaning	\$100.00
Carpet cleaning	\$131.25
Estimate to replace three interior doors	\$268.77
Estimate to replace three interior door handsets	\$114.04
Unpaid Fortis bill	\$150.00
Unpaid electrical bill	\$100.00
Unpaid rent for October 2019	\$1,800.00
TOTAL CLAIMED	\$3,096.88

The Landlords also sought recovery of the \$100.00 filing fee for a total claim of \$3,196.88.

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 Landlords 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.

I will first deal with the Landlords' request for monetary compensation for unpaid rent and utilities.

A tenant may end a tenancy provided that the notice complies with sections 45 and 52 of the *Act*, which provide as follows:

Tenant's notice

45 (1) 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.

(2) A tenant may end a fixed term 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,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

I accept the Landlord's evidence that the Tenant gave notice to end her tenancy on September 11, 2019. Although the Tenant wished to move by September 30, 2019, the effective date of her notice, based on section 45, is October 31, 2019.

I am also satisfied, based on the photos submitted by the Landlord, that condition the rental unit was left in by the Tenants impacted the Landlords' ability to re-rent the unit.

For these reasons I find the Landlords are entitled to compensation from the Tenants for unpaid rent for October 2019.

I also accept the Landlords' evidence that the Tenants failed to pay the utilities as required by the tenancy agreement. As such I award the Landlords compensation for the amounts claimed.

I will now address the Landlords' claim for the costs to clean and repair the rental unit.

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.

I am persuaded, by the Landlord's testimony, as well as the photographic evidence before me that the Tenant failed to clean and repair the rental unit as required by the *Act*. I find that the amounts claimed by the Landlords are reasonable in relation to the condition of the rental unit. I therefore award the Landlords compensation for the amounts claimed for cleaning and repairs.

As the Landlords have been successful in their Application I find they are also entitled to recover the filing fee pursuant to section 72 of the *Act*.

Conclusion

The Landlords are entitled to monetary compensation in the amount of **\$3,196.88** for the following:

Cleaning supplies	\$32.82
Yard cleaning and junk removal	\$400.00
House cleaning	\$100.00
Carpet cleaning	\$131.25
Estimate to replace three interior doors	\$268.77
Estimate to replace three interior door handsets	\$114.04
Unpaid Fortis bill	\$150.00
Unpaid electrical bill	\$100.00
Unpaid rent for October 2019	\$1,800.00
TOTAL CLAIMED	\$3,096.88

Pursuant to section 38 of the *Act* I authorize the Landlords to retain the Tenant's \$900.00 security deposit towards the amounts awarded and I grant the Landlords a Monetary Order for the balance due in the amount of **\$2,296.88**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

As discussed during the hearing, Ministerial Order M089 issued March 30, 2020, pursuant to the State of Emergency declared on March 18, 2020, prohibits the enforcement of certain Residential Tenancy Branch orders made during the state of emergency. Enforcement of other Residential Tenancy Branch orders may be

affected by the suspension of regular court operations of the BC Supreme Court and Provincial 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: April 15, 2020

Residential Tenancy Branch