



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNR MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on April 14, 2020. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit and for damage or loss under the Act;
- a monetary order for unpaid rent;
- authorization to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and,
- to recover the cost of the filing fee.

The Landlord and the Tenants all attended the hearing. The Tenants confirmed receipt of the Landlord's application and evidence and did not take issue with the service of these documents. The Tenant stated he sent his evidence by email to the Landlord, but only sent it 2 days before the hearing. The Landlord stated he had issues opening up the evidence and since it was sent at the last minute, it was not something he could remedy in time. The Tenant did not follow up with the Landlord to ensure he could open the email evidence.

I find it important to note that the Residential Tenancy Branch has recognized the challenges and immense impacts that the COVID-19 pandemic has had on landlords and tenants. As such, the Government has made some changes to assist landlords and tenants manage through COVID-19. These provisions are in effect during the course of the state of emergency and until further notice.

Service provisions are typically laid out in section 88, 89 and 90 of the Act. Some of these provisions have been modified and the Director has issued practice directives. For example:

Personal (in-person) service of documents is not a valid method of service during this time to reduce potential transmission of COVID-19. To assist landlords and tenants work around this restriction, the Director of the Residential Tenancy Branch has issued a Director's Order to allow service by email during the state of emergency.

Emailed documents will be deemed received as follows:

- If the document is emailed to an email address and the person confirms receipt by way of return email, it is deemed received on the date receipt is confirmed;
- If the document is emailed to an email address, and the person responds to the email without identifying an issue with the transmission, viewing the document, or understanding of the document, it is deemed received on the date the person responds.
- If the document is emailed to an email address from an email address that has been routinely used for correspondence about tenancy matters, it is deemed received three days after it was emailed.

I note that, in some situations, the pandemic will prevent the parties from meeting time limits set out in the Act or Rules. As such, it is necessary to consider the relevant circumstances when determining whether to grant an order extending a time limits under the Act. If a deadline is missed, the party will need to provide a reasonable explanation of why they or someone on their behalf were unable to file the application or serve the evidence within the required time limits.

In this case, the Tenants chose to use email as a method of service, which is acceptable in some situations. However, it is not clear why they waited until two days before the hearing to send this evidence to the Landlord. I do not find the Tenants have presented any reasonable explanation as to why they waited so long to send evidence, nor have they explained how the pandemic may have contributed to the late service, such that I could find an extension is appropriate, especially considering this could significantly impact procedural fairness.

Residential Tenancy Branch Rule of Procedure 3.15, state that the respondent's (Tenants') evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

The Tenants failed to serve their evidence in accordance with the Rules, without any explanation as to why, and in doing so, jeopardized procedural fairness and the Landlord's ability to understand and respond to the evidence. As such, I find the Tenants evidence is not admissible, as it was not served in accordance with the Rules.

Both parties were provided the 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.

Preliminary Matters

The Landlord's application consisted of a claim for monetary compensation for 3 main items. The Landlord is seeking to recover lost and unpaid rent, totalling \$25,828.00. In addition to this amount, the Landlord also listed that he wanted \$5,000.00 for unpaid utility bills, and damage to the unit.

During the hearing, the Landlord indicated he had not completed a monetary order worksheet nor had he itemized or detailed the different items (utility bill amounts, the periods of those bills, and also what items were damaged/lost). The Landlord provided no invoices or photos of the damage, and gave no indication as to how he arrived at the amount he was seeking. He also did not present any clear oral testimony regarding how the amount of \$5,000.00 was calculated for utility bills and damages.

I turn to the following rules of procedure:

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- **a detailed calculation of any monetary claim being made;**
- *a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and*
- *copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].*

When submitting applications using the Online Application for Dispute Resolution, the applicant must upload the required documents with the application or submit them to the Residential Tenancy Branch directly or through a Service BC Office within three days of submitting the Online Application for Dispute Resolution.

I note the Landlord's claim is for a substantial amount of money, and many different items. I find it is prejudicial to the respondent to not have a monetary order worksheet, or any breakdown of how the amount of \$5,000.00 was arrived at. The Landlord had ample opportunity to upload a written breakdown, bills, and photos, but he failed to do so. This makes it difficult for me to understand the nature and basis of the application. Since the Landlord did not submit the necessary documents, and failed to explain how he arrived at the amount of \$5,000.00, I dismiss his claim for utilities and damage to the unit, without leave to reapply.

The only issues remaining on the Landlord's application are laid out below.

Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary order requested?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord stated that he is seeking compensation because the Tenants failed to give proper notice when they moved out, and also because the Tenants did not pay rent for a couple months before they moved out.

Both parties agree that the Landlord holds a security deposit in the amount of \$3,150.00. Both parties also agree that monthly rent was \$6,457.00 at the time the tenancy ended and that rent is due on the first of the month. The tenancy is a month-to-month tenancy.

The Landlord stated that he received written notice from the Tenant, via text message, on November 30, 2019. The Tenants confirmed they sent a message to the Landlord on that day stating that they had already vacated the rental unit, and did so that day.

The Landlord stated that he consulted with his realtor, and was told he needed to follow a certain process to gain access to the rental unit. The Landlord was not clear about what his process was, but indicated he did not enter the unit for "2-3 weeks" after he was told that the Tenants had moved out. The Landlord stated that the rental unit was not in good shape, and it was not possible to re-rent it right away, which is why he is seeking December 2019 rent, even though the Tenants had moved out by that time.

With respect to rent for the months leading up to the end of the tenancy (September, October, November 2019), the Tenants stated that they issued the Landlord post dated cheques for each month, but there was an issue with the previously issued cheques. Subsequently, the Tenants re-issued a cheque for September and October rent combined into one cheque. It is not clear if the Landlord intended to do this, but the Landlord attempted to cash both the September and October combined cheque as well as the individual cheque for September. As a result, the Tenants cheques bounced, and the relationship between the parties began to degrade further.

The Tenant does not refute that he still holds the money for September, October, and November 2019, but he did explain why this happened. The Tenant explained that they were tired of the issues with the house (intermittent furnace, poorly maintained pool), and eventually, when the weather started to cool off in November, they decided to move out. When they secured a new place, they moved out on November 30, 2019, and told the Landlord that day, via text message.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/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 Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

First, I turn to the Landlord's request to recover unpaid rent for September- November rent (3 x \$6,457.00). I acknowledge there were some banking issues that contributed to the non-payment. However, it is not disputed that the Landlord never received rent for these months. The Tenants have not presented any evidence to show that they had the legal authority or basis to withhold rent, or that it was not due, as per the tenancy agreement. I find the Tenants owe rent up until the end of November 2019, as they lived in the rental unit for this time, but did not pay.

Next, I turn to the Landlord's request for December 2019 rent. The Landlord is seeking this amount due to the Tenant's short notice. I note the Tenants did not give proper 1-Month Notice, and only sent a text message, after they had moved out on November 30, 2019.

I turn to section 45 of the Act:

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.

I acknowledge the Tenants were not pleased with how the rental property was being maintained. However, I find the Tenants breached section 45 of the Act by failing to give at least one month written notice to the Landlord. It appears the Tenants only sent a text message after they had vacated on November 30, 2019, which is not a lawful notice. That being said, I note the Landlord stated that he waited “2-3 weeks” before he went to check on the rental unit, in person. The Landlord stated that there was garbage left behind and the unit was not liveable, due to damage. However, he did not elaborate on this matter, nor did he provide any documentary evidence. The Tenants refute leaving the unit messy. Further, the Landlord did not state what they did to mitigate the lost rent for December (re-posting the rental ad, trying to quickly remediate any deficiencies).

It is not clear why the Landlord would have waited 2-3 weeks prior to checking on the rental unit. I find this inaction contributed to the lost rent for that month, and merely exacerbated the issue. I find the Landlord has failed to sufficiently mitigate his losses for December 2019 rent. As such, I dismiss his application for December rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was substantially successful with his application, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. Also, I authorize the Landlord to retain the security deposit to offset the other money owed.

In summary, I find the Landlord is entitled to the following monetary order:

Item	Amount
Unpaid Rent (Sep, Oct, Nov)	\$19,371.00
PLUS: Filing Fee	\$100.00
Subtotal:	\$19,471.00
LESS: Security Deposit	\$3,150.00
Total Amount	\$16,321.00

Conclusion

The Landlord is granted a monetary order in the amount of **\$16,321.00**, as specified above. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and 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: April 15, 2020

Residential Tenancy Branch