



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL-S, 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.

GS, the agent for the landlords, attended ("the landlord"). The landlord 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 thirty 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

December 5, 2019 and deemed received by the tenant under section 90 of the *Act* five days later, that is, on December 10, 2019.

The landlord provided the Canada Post Tracking Number in support of service to which I refer on the cover page as well as a copy of the receipt. Pursuant to sections 89 and 90, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution on December 10, 2019.

Issue(s) to be Decided

Is the landlord entitled to 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.

Background and Evidence

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

The landlord testified the 1-year fixed term tenancy began July 1, 2019 and ended when the tenant vacated on November 15, 2020 after providing one month's notice on October 15, 2020. Rent was \$1,200.00 monthly payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit of \$600.00 which the landlord holds. The landlord submitted a copy of the tenancy agreement.

A condition inspection was conducted on moving in. The landlord submitted a copy of the report which was signed by both parties and indicated the unit was in good condition in all material aspects.

The tenant failed to attend a scheduled condition inspection at the end of the tenancy. The landlord issued a Final Notice to Attend in the RTB form. The Notice was dated November 17, 2020 and scheduled the inspection for November 17, 2020. The landlord

sent the Notice to the tenant by email on November 17, 2020 at the email address used by the tenant in correspondence with the landlord.

The tenant did not attend. A copy of the Notice was submitted by the landlord which includes the provision that the right of the tenant to the return of the security deposit no longer exists if the tenant fails to attend two opportunities for inspection.

The landlord completed the condition inspection without the tenant present and submitted a copy of the report. The landlord testified that considerable damage was done to the unit by the tenant as detailed in the report. The walls were damaged, and the unit needed cleaning. The landlord submitted photographs of the unit taken when the tenant vacated in support of the landlord's assertion of damage and lack of cleanliness. The landlord requested compensation for 15 hours of cleaning at \$25.00 an hour; the landlord submitted an itemized list of the dates the work was done and the precise repairs/cleaning that took place.

The landlord testified the landlord incurred out-of-pocket expenses for repair/cleaning supplies in the amount of \$69.37 in support of which she submitted the receipt in this amount.

The landlord stated that immediately upon receiving the tenant's notice to vacate, the landlord started advertising on several websites. The landlord submitted copies of the ads. The landlord was able to find a replacement occupant by December 1, 2019 at a reduced rent of \$1,100.00. The landlord explained that the market had softened for rentals and the landlord had to reduce the rent in order to find a replacement occupant quickly.

The landlord requested compensation for lost rent as follows:

ITEM	AMOUNT
Loss of rent of \$100.00 for each of the 7 months remaining of the 1-year fixed term tenancy	\$700.00
Non-payment of rent from November 15, 2019 to November 30, 2019.	\$600.00
TOTAL CLAIM for LOSS OF RENT	\$1,300.00

The landlord also requested compensation for the following:

ITEM	AMOUNT
Cleaning	\$375.00
Cleaning supplies	\$69.37
TOTAL CLAIM for CLEANING EXPENSES	\$444.37

In support of the request for compensation for the expenses in the above table, the landlord submitted testimony supported by copies of the condition inspection report on moving in and moving out, photographs, and receipts.

The landlord requested reimbursement of the \$100.00 filing fee.

In summary, the landlord's claim is as follows:

ITEM	AMOUNT
Loss of Rent (above)	\$1,300.00
Cleaning (above)	\$444.37
Reimbursement filing fee	\$100.00
AMOUNT CLAIMED	\$1,844.37

The landlord requested authorization to apply the security deposit of \$600.00 to the monetary award as follows:

ITEM	AMOUNT
Monetary award requested	\$1,844.37
(Security deposit)	(\$600.00)
TOTAL MONETARY AWARD REQUESTED	\$1,244.37

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.

Loss of Rent

Section 45 (2) considers how a tenant ends a fixed term tenancy, stating:

Tenant's notice

45(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.** (emphasis added)

The end of the tenancy term was June 30, 2020. The tenant vacated the unit mid-October 2019, 7 months before the end of the term.

The tenant did not provide the notice required under section 45(2) and under the Agreement.

Section 7 of the *Act* provides that where a landlord claims against a tenant for loss of rent the landlord has a burden to prove the landlord took made every reasonable effort to minimize losses:

Liability for not complying with this Act or a tenancy agreement

7 (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss. (emphasis added)

Residential Tenancy Policy Guideline 3: Claims for Rent and Damages for Loss of Rent provides information and policy statements with respect to claiming for loss of rent. The policy guideline states, in part:

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.

The landlord testified to efforts to find a replacement tenant in the month of October 2019 including posting on online rental sites. The landlord testified she located a suitable replacement tenant with a new tenancy agreement commencing December 1, 2019.

Considering the evidence provided by the landlord, I am satisfied the landlord made reasonable efforts to mitigate loss.

Considering the uncontradicted evidence of the landlord, I find the tenant failed to provide notice as required to end the tenancy as a result of which the landlord has incurred a loss of rent as claimed (\$600.00), being rent from November 14, 2019 to November 30, 2019 and a reduced rent of \$100.00 a month for each of 7 months (\$700.00).

The landlord is therefore entitled to a monetary award for loss of rent in the amount of \$1,300.00 as claimed.

Compensation for Damages

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 receipt and the photographs showing the unit needed cleaning and repairs. The landlord was credible, and well organized; the landlord's testimony was well-supported by documentary evidence including a condition inspection report on moving in and moving out, a break-down of the time for repairs/cleaning, a plausible explanation for each item claimed, and copies of emails with the tenant.

Taking into account the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the unit needed cleaning and repairs when the tenant vacated as described by the landlord, the tenant is responsible for the lack of cleanliness and the damage, the landlord incurred the amount claimed in expenses, the expenses are reasonable, the landlord spent the amount of time claimed to clean and repair the unit, and the landlord took all reasonable steps to mitigate expenses. I find the landlord is entitled to a monetary award in the amount requested for this aspect of the claim.

As the landlord is successful in the landlord's claim, the landlord is granted a monetary award of \$100.00 for reimbursement of the filing fee.

The landlord is granted authorization to apply the security deposit to the award.

In summary, the award is as follows:

ITEM	AMOUNT
Monetary award requested	\$1,844.37
(Security deposit)	(\$600.00)
TOTAL MONETARY AWARD	\$1,244.37

Conclusion

The landlord is entitled to a monetary order in the amount of **\$1,244.37**. 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*.

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 27, 2020

Residential Tenancy Branch