



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL, MNDL-S

Introduction

In this dispute, the landlord seeks compensation against their former tenant, pursuant to section 67 of the *Residential Tenancy Act* (the “Act”). They also seek recovery of the filing fee under section 72 of the Act.

The landlord applied for dispute resolution on December 23, 2019 and a dispute resolution hearing was held, by way of telephone conference, on May 26, 2020. The landlord attended the hearing, was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The tenant did not attend.

The landlord testified that she served the tenant with the Notice of Dispute Resolution Proceeding package by Canada Post registered mail on December 28, 2019. A copy of the receipt and the tracking number were submitted into evidence. Canada Post’s online tracking database indicated that the package was received and signed for on December 30, 2019. Based on the landlord’s oral and documentary evidence I find that the tenant was served in compliance with section 89 of the Act.

I have only considered evidence that was submitted in compliance with the *Rules of Procedure*, to which I was referred, and which was relevant to the issues of this application. Further, only relevant testimony will be reproduced in this decision.

Issues

1. Is the landlord entitled to compensation as claimed?
2. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

The landlord testified that the tenancy began September 15, 2016 and ended December 10, 2019. Monthly rent was \$1,200 and which was due on the first of the month. A security deposit of \$600 was paid by the tenant; the deposit is currently held in trust by the landlord. Submitted into evidence was a copy of the written tenancy agreement.

In this application, the landlord seeks compensation for the following four items:

1. \$788.29 for costs related to repairs to cabinets and refrigerator,
2. \$510.75 for the tenant's portion of propane,
3. \$4,300.00 for unpaid rent, and
4. \$100.00 for the filing fee.

A Condition Inspection Report was submitted into evidence which indicated cracks to the refrigerator and damage to the cabinets which were not, as explained by the landlord, present at the start of the tenancy. Repair cost quotes were submitted into evidence reflecting the amounts sought.

While not submitted into evidence, the landlord testified that the parties had agreed (and signed a written document to this effect) that the tenant was responsible for 45% of the propane costs at the end of the tenancy, for a total of \$510.75. I note, however, that the landlord submitted a screenshot of a text message conversation between the parties on November 14, 2019, which reads as follows:

Landlord: Did you pay for the propane?
Tenant: No I haven't I thought I was going to pay for what I use till move out
Landlord: You need to pay it then the day you move out let me know so I can reimburse you the difference.

Finally, the landlord submitted an Excel document which listed the amount of rent due throughout 2019 and the amounts paid and not paid. From July 2019 onward, the rent was not paid, and arrears amounted to \$4,300.00 by the end of the tenancy.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (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.
- ...
- 67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Claim for Repair Costs

Subsection 37(2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. In this case, the landlord's undisputed testimony along with the Condition Inspection Reports clearly establish that the tenant did not leave the rental unit undamaged, specifically, the refrigerator and cabinet. But for the tenant's damage to these items the landlord would not have incurred costs.

As for the amounts claimed, they are reasonable, and I find that given the reasonable amounts claimed that the landlord mitigated any loss.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving her claim for \$788.29 for these two items.

Claim for Propane

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. "Rent" includes anything else under a tenancy agreement that a tenant must pay for, such as utilities. And, while the tenancy agreement does not include a reference to propane (tenancy agreements usually contain this, either as part of the agreement or in an addendum), the text message conversation of November 14 proves, I find, that the tenant was responsible for a portion of the propane as claimed.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving her claim for \$510.75 for propane used by the tenant but not paid for.

Claim for Unpaid Rent

As noted, section 26 of the Act requires a tenant to pay rent when it is due. In this tenancy, the tenant did not pay rent in full for several months, and arrears totalled \$4,300.00. The landlord provided oral testimony to this effect and submitted a spreadsheet which supports her claim. Further, I note that some of the other text message submitted into evidence reflects the tenant's awareness that she owed rent.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving the claim for unpaid rent in the amount of \$4,300.00.

Claim for Filing Fee

Pursuant to section 72(1) of the Act I grant her claim for reimbursement of the filing fee of \$100.00.

Summary of Award and Retention of Security Deposit

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I order that the landlords may retain the tenant’s security deposit of \$600.00 in partial satisfaction of the above-noted awards.

A total monetary award of \$5,699.04, and a monetary order in the amount \$5,099.04 for the landlord, are calculated as follows:

CLAIM	AMOUNT
Unpaid rent	\$4,300.00
Propane	510.75
Cabinet and fridge repair costs	788.29
Filing fee	\$100.00
LESS security deposit	(\$600.00)
Total:	\$5,099.04

Conclusion

I grant the landlord a monetary order in the amount of \$5,099.04, which may be served on the tenant. Should the tenant fail to pay the landlord the amount owed, the landlord must serve a copy of the order on the tenant and may file the order in the Provincial Court of British Columbia (Small Claims Court) for enforcement and collection.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: May 26, 2020

Residential Tenancy Branch