



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- a monetary order for unpaid rent;
- compensation for a monetary loss or other money owed; and
- recovery of the filing fee.

The landlord's legal counsel attended the hearing; however, the tenant did not attend.

The legal counsel stated the landlord served the tenant with their application for dispute resolution and Notice of Hearing by personal service on December 15, 2019, just prior to the tenant vacating the rental unit.

The legal counsel submitted that the tenant was served with the landlord's amended application on April 23, 2020, to the email address the tenant has routinely used to correspond about tenancy matters.

I accept the landlord's evidence that the tenant was served notice of this hearing in a manner complying with section 89 of the Act, and the amended application in a manner complying with the Director's Order of March 30, 2020, allowing for service of documents. The hearing proceeded in the tenant's absence.

The legal counsel was provided the opportunity to present her evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the

landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the legal counsel and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent, monetary compensation for damage or loss, and recovery of the filing fee?

Background and Evidence

The written tenancy agreement shows that this tenancy began on May 15, 2019, for a fixed term through May 14, 2020, monthly rent was \$2,650 and the tenant paid a security deposit of \$1,325 and a pet damage deposit of \$250. The landlord has retained the security deposit and the pet damage deposit, having made this claim against them.

The landlord's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid rent, Aug, Oct, and Nov 2019	\$7,950
2. Late penalty	\$300
3. Garage remote re-key	\$150
4. Less security deposit of \$1,325 and pet damage deposit of \$250	(\$1,575)
TOTAL	\$6,825

In support of the application, the legal counsel submitted that the landlord served the tenant a One Month Notice to End Tenancy for Cause (Notice) on November 8, 2019, for a move-out date of December 15, 2019. The cause listed was for repeated late payments of rent.

Additionally, the evidence shows the parties signed a Mutual Agreement to end the tenancy, for a move-out date of December 15, 2019.

The legal counsel submitted that the tenant, while staying in the rental unit until December 15, 2019 failed to pay the monthly rent for August, October, and November 2019, leaving a rent deficiency of \$7,950 owed under the written tenancy agreement. The legal counsel also submitted that the tenant did not return the garage door key, which required the landlord to incur costs to have it re-keyed. The landlord submitted the receipts for the claim.

As to the late fees of \$100 per month, the legal counsel submitted that the tenant agreed to that amount and the charge was for the three months rent was unpaid.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. In this case, the landlord has the burden of proof to substantiate their claim on a balance of probabilities.

In light of the tenant's failure to appear to provide a rebuttal to the landlord's evidence, despite being duly served, I accept the landlord's undisputed evidence.

Unpaid rent –

Under section 26 of the Act, a tenant must pay rent when it is due under the tenancy agreement.

On the basis of the undisputed evidence, I accept that the tenant owed the monthly rent under the terms of the written tenancy agreement for the months of August, October, and November 2019, and failed to pay.

I therefore find the landlord has established a monetary claim of \$7,950 in total, or \$2,650 for each of the listed three months.

Late penalty –

While the applicant has termed this a late penalty, I find the claim is more in the form of a fee for late payments of rent.

Section 7 of the Residential Tenancy Regulations addresses non-refundable fees a landlord is allowed to charge. Under this section, a landlord may not charge more than \$25 for a late payment of rent, and only if the tenancy agreement provides that fee.

In this case, I have reviewed the written tenancy agreement submitted by the applicant and did not see a provision for a fee for late payments. While the written tenancy agreement said that there was an addendum with 14 additional terms, which may very well have provided for a late payment fee, that addendum was not provided.

I therefore dismiss the landlord's claim for \$300 for a late penalty.

Garage remote re-key –

Under the Act, a tenant is required to give the landlord all keys or other means of access to the rental unit and residential property that are in the possession of the tenant.

On the basis of the undisputed evidence, I accept that the tenant failed to return the garage remote and I find it reasonable that the landlord incurred a cost to have it re-keyed.

I therefore find the landlord has established a monetary claim of \$150, as reflected on their documentary evidence.

Filing fee –

I grant the landlord recovery of their filing fee of \$100, due to the successful application and pursuant to section 72(1) of the Act.

Due to the above, I grant the majority of the landlord's application and find they are entitled to a total monetary award of \$8,200, comprised of unpaid rent of \$7,950 for August, October and November 2019, a garage remote re-key of \$150 and the filing fee for \$100 paid for this application.

At the landlord's request, I direct them to retain the tenant's security deposit of \$1,325 and the pet damage deposit of \$250 in partial satisfaction of their monetary award of \$8,200.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$6,625.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is advised that costs of such enforcement are subject to recovery from the tenant.

Conclusion

The landlord's application for monetary compensation is granted, they have been authorized to retain the tenant's security deposit of \$1,325 and pet damage deposit of \$250 and they have been awarded a monetary order for the balance due, in the amount of \$6,625.

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: May 14, 2020

Residential Tenancy Branch