



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on February 19, 2020 seeking an order to recover the money for unpaid rent and utilities, and an order for compensation for damage to the rental unit. Additionally, the landlord seeks to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on June 23, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord attended the telephone conference all hearing; the tenant did not attend.

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenant with this Notice of Dispute Resolution Proceeding. This means the landlord must provide proof that the document has been served at a verified address allowed under Section 89 of the *Act*, and I must accept that evidence.

In the hearing the landlord stated that they used Canada Post registered mail to send the Notice of Hearing to the tenant. This package included the evidence the landlord presents in this hearing. The landlord gave testimony that the address they provided on the registered mail package was that of the tenant’s forwarding address. They provided a Canada Post registered mail tracking number – this information appears in the landlord’s evidence. Using this tracking number, they verified that the package was delivered on May 15, 2020.

I accept the landlord’s undisputed evidence that the package was sent to the tenant via registered mail. Based on the submissions of the landlord, I accept they served notice of this hearing and their evidence in a manner complying with section 89(1)(c) of the *Act*, and the hearing proceeded in the tenant’s absence.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for recovery of rent/utilities, or compensation for damage pursuant to section 67 of the *Act*?
- Is the landlord entitled to retain the security deposit pursuant to section 38 of the *Act*?
- Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord applies for an order applying the security deposit to the monetary claim.

The landlord provided a copy of the tenancy agreement and spoke to its relevant terms in the hearing. Both parties signed the tenancy agreement on November 21, 2018. The monthly rental amount was \$2,250.00, payable on the 31st of each month. The tenant paid a security deposit on the date of the signing, for \$1,125.00. The tenancy started on December 5, 2018. The landlord stated the rent increased to \$2,300.00 per month in January 2020.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) to the tenant on January 11, 2020 for the January 2020 unpaid rent. The landlord applied for a dispute resolution, and on January 29 they received an Order of Possession, and a monetary order for \$2,400.00 for January 2020 rent and the \$100.00 application filing fee. They gave these orders to the tenant on January 29, 2020.

On February 3, 2020 the landlord sought and received a Writ of Possession from the BC Supreme Court. Bailiffs executed this order on February 7, 2020. On February 14, 2020 the landlord received the tenant’s forwarding address. On February 19, 2020, the landlord applied for this dispute resolution proceeding to make their claim for the recovery of money owed by the tenant.

The landlord completed a monetary order worksheet on May 13, 2020. This is an updated itemizing of expenses after their initial application on February 19, 2020.

The landlord claims unpaid rent amounts for January and February 2020, for \$4,600.00 total. A previous monetary order from another dispute awarded the amount of \$2,400 for January

rent and a hearing filing fee; however, the tenant did not pay this amount after the landlord served the monetary order.

The landlord also claims unpaid utilities in the amount of \$182.48.

The landlord claims other expenses associated with the Writ of Possession:

change locks	\$63.00
hiring of bailiffs and movers	\$3,075.43
supreme court writ of possession fee	\$134.00

The claim for damages and maintenance of the unit after the tenant vacated are as follows:

garbage dump fee	\$226.70
labour to remove garbage and cleaning	\$825.00
truck rental	\$59.91
electric repair	\$315.00
appliances – laundry and new fridge	\$915.88

Adding a \$100.00 Application filing fee for this hearing, the total amount of the landlord's claim is **\$10,597.00**.

The landlord also provided details and receipts on the clean-up and repair costs they incurred after the tenant moved out. This was supplemented by photos of the unit – they show different rooms in need of repair and garbage removal.

The landlord provided a copy of the Condition Inspection Report. They completed this document on the tenant move in date, with the tenant, on December 6, 2018. It shows incomplete boxes beside the entry detailing the condition of the refrigerator, and a check beside the washer/dryer row.

Analysis

The relevant portion of the Act regarding the return of the security deposit is section 38:

- (1) . . .within 15 days after the later of
 - (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing;
 The landlord must do one of the following:
 - (c) repay. . .any security deposit. . .to the tenant. . .;

- (d) make an application for dispute resolution claiming against the security deposit. . .

Subsection 4 sets out that the landlord may retain an amount from the security deposit with either the tenant's written agreement, or by a monetary order of this office.

In this hearing, I find the landlord properly applied for dispute resolution on February 19, 2020. This is within the 15-day timeframe set out in the *Act*. I am satisfied that the tenancy ended on February 7, 2020 and the tenant provided their forwarding address on February 14, 2020. The issue then is the assignment of responsibility, if at all present, for the damages to the rental unit.

Section 37(2) of the *Act* requires a tenant, when vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys and other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide enough evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

As set out above, the landlord's worksheet identifies four separate needs: recovery of rent and utilities; costs associated with the tenant eviction on February 7, 2020; damages arising during the tenancy; and cleaning costs. To determine the landlord's eligibility for compensation, I carefully examine the evidence they have presented for each item, to establish whether they have met the burden of proof.

- unpaid rent and utilities:

The landlord presented a copy of a monetary order dated January 27, 2020 for \$2,400. This is one month's rent amount plus a previous application filing fee. A previous order of this office does not receive subsequent consideration or a separate monetary order. The monetary order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court. In short, the matter was already decided by an Arbitrator in this office; the enforcement of the order belongs in a different forum.

The landlord presents a valid claim for February's rent, \$2,300.00. I find the end of tenancy was pushed back due to the need for eviction, and this significantly impacted their ability to obtain new tenants. Also, I find the unit required significant cleanup at great cost and required time to do so. This is a rent amount that is foregone due to the tenant's breach of the *Act*. I so order this amount of \$2,300.00 to the landlord.

The landlord has established the amount of \$182.48 owing for utilities. I so order the tenant to compensate the landlord for this amount. The water utility bill submitted shows the appropriate billing period and the exact amount owing.

- costs associated with eviction:

The landlord's need for eviction stems from the tenant's breach of the *Act*. I find as fact that the tenant did not vacate the unit on the date provided by the landlord on the issued 10 Day Notice. I rely on the evidence that the landlord had to obtain a writ of possession and hire bailiffs to undertake the eviction as proof that the tenant did not vacate in accordance with section 46.

I find the landlord is therefore eligible for compensation of the costs associated with the eviction. This total amount for a writ and hiring bailiffs is \$3,209.43. The landlord shall receive this amount for compensation.

Additionally, I find the landlord found it necessary to change the locks to the unit for good reason. The tenant responded to a request from the landlord using dismissive disrespectful terms; the bailiffs advised the landlord to not be present during the eviction; and the tenant left spray-painted inappropriate imagery on the front lawn of the property. The landlord shall receive the amount of \$63.00 for the lock replacement.

- damages arising during tenancy:

I find the need for refrigerator replacement is not established. There is no indication of the age of the replaced refrigerator, nor it's working state. Strictly speaking, its condition is not properly indicated on the Condition Inspection Report. Weighing the need for a new fridge against the photo provided showing the interior, I am not satisfied that its condition is attributable to anything other than wear and tear. I am not satisfied that damage to the fridge resulted from the relatively short one-year tenancy over that which accumulates over this appliance's entire lifespan. I dismiss this portion of the landlord's claim for this reason.

The "laundry machine service call" for the \$126.00 portion of the claim does not establish that any damage to the washer and/or dryer stems from a breach in the

tenancy agreement or the legislation by the tenant. There is not enough specific information on the invoice to show the damage; therefore, I am not satisfied of the value. For this reason, I dismiss this portion of the landlord's claim.

Also, the need for 3 switch replacements – electrical work – is not established. The receipt provided by the landlord for this portion of the claim does not show that specific work, nor the need for this repair. There is no photo evidence to show the need for repair, over and above that of other more immediate work. I dismiss this portion of the landlord's claim for this reason.

- cleaning costs:

I find the landlord has identified the need for cleaning in the form of junk removal. I accept this evidence from the landlord, including receipts for the cost of the work they paid for.

The photos provided by the landlord show separate rooms of the unit had a significant amount of garbage needing removal. Moreover, there is such an amount that a moving truck filled made multiple trips to a dumping site. From this evidence, I am satisfied the landlord had to undertake a significant effort to clean out the unit through truck rental and labour.

The worksheet shows specific paid amounts, and this is verified with receipts the landlord submitted. I find the amount of \$1,1161.61 represents completed work, paid for by the landlord. This is the result of the tenant breaching section 37(2)(a) of the *Act*. The landlord shall receive this amount for compensation.

The landlord has properly made a claim against the security deposit and have the right to do so. The landlord is holding this amount of \$1,125.00. I order this amount deducted from the total of the rent, utilities, cleaning and eviction costs above; combined, these total \$6,916.52. This is an application of section 72(2)(b) of the *Act*.

As the landlord is successful in this application for compensation, I find that the landlord is entitled to recover the \$100.00 filing fee.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$5,891.52 for compensation set out above and the recovery of the filing fee for this hearing application. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: June 30, 2020

Residential Tenancy Branch