



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FINCAP CAPITAL INC. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL, MNDL, FFL, MNDCL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on January 15, 2020, wherein the Landlord sought monetary compensation from the Tenant in the amount of \$23,388.75 for unpaid rent, damages to the rental unit, and recovery of the filing fee.

Only the Landlord's representative, V.S., the President of the company (hereinafter referred to as the "Landlord's Agent"), called into the hearing. He gave affirmed testimony and was provided the opportunity to present the Landlord's evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 2:12 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord's Agent testified that he personally served the Tenant with the Notice of Hearing and the Application on February 6, 2020.

I accept the Landlord's Agent's testimony in this respect and find the Tenant was duly served as of February 6, 2020 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's Agent's submissions and or arguments are reproduced here; further, only the evidence

specifically referenced by the Landlord's Agent and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord recover the filing fee?

Background and Evidence

This tenancy began September 15, 2016. Monthly rent was \$1,250.00 when the tenancy began and was \$1,296.25 when the tenancy ended.

The tenancy ended pursuant to an Order of Possession granted on January 3, 2018. The file number for that matter is included on the unpublished cover page of this my Decision. On the application the Landlord's agent testified that despite the Tenant being served with the Order of Possession, the Tenant refused to move out until the end of January 2018.

The Agent confirmed that the Landlord applied for Dispute Resolution on January 15, 2020 as they were not able to find the Tenant and did so to ensure that they did not miss the two year deadline imposed by section 60 of the Act. He stated that shortly after they filed for Dispute Resolution, they found out the Tenant was again working at the recycling yard in the same community as the rental unit such that they were able to personally serve him with the Application.

The Landlord filed a Monetary Orders Worksheet in which the following was claimed:

Cleaning and garbage removal	\$10,500.00
Rent owing to January 2018	\$7,603.75
Lost rental revenue 4 months at \$1,296.25	\$5,185.00
Filing fee from previous hearing	\$100.00
TOTAL CLAIMED	\$23,338.75

The Landlord's Agent stated that it took two workers, ten days to remove all the refuse the Tenant had "collected". He further stated that they had to use 20 cubic yard bins (as a comparison, the Agent stated that a normal apartment building uses a 3 cubic yard bin).

The Landlord's Agent testified that due to the condition of the rental unit, and the presence of cat urine, the Landlord had to rip up and replace the floor and the sub-floor, as well as the cabinetry. In total the Landlord claimed the sum of \$10,500.00 for the cost of junk removal, replacement of the floors and cabinets and the associated labour. A copy of the invoice for this expense was provided in evidence before me.

As noted, the tenancy ended pursuant to an Order of Possession. The Landlord's Agent stated that during the tenancy the Tenant failed to pay rent when due following which the Landlord served a 10 Day Notice to End Tenancy; the outstanding rent at the time that notice was issued was \$2,465.00. The Landlord's Agent stated that the Tenant did not pay rent after receiving the Notice; as such, in the claim before me the Landlord claimed the \$7,602.75 owing at the time the Tenant vacated the rental unit at the end of January 2018.

In the within action the Landlord also sought recovery of the filing fee from the prior hearing.

The Landlord's Agent also testified that the Landlord was not able to re-rent the rental unit due to the condition left by the Tenant and to this end they sought the sum of \$5,185.00 representing four months of loss of rent (\$1,296.25 x 4). The Agent stated that it actually took longer to repair and clean up the rental unit however, they only claimed four months in compensation.

Analysis

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.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides 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.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
 - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

I accept the Landlord's Agent's undisputed testimony, as well as the invoice provided in evidence before me, that the Tenant failed to clean and repair the rental unit as required by section 37 of the *Act*. I further accept the Landlord's Agent's testimony that the condition was so poor that the flooring and cabinets had to be removed and replaced. While I would have preferred to have had the benefit of photos of the rental unit, I am persuaded by the Landlord's Agent's testimony, which I found forthright and compelling, that the condition of the rental was so poor it took two workers 10 days to remove the refuse left by the Tenant. I therefore award the Landlord the **\$10,500.00** claimed for cleaning and repairs to the rental unit.

I accept the Landlord's Agent's testimony that at the time the tenancy ended the Tenant's rental arrears were \$7,603.75. At the time the 10 Day Notice was issued in September of 2017 the amount outstanding was \$2,465.00. I accept the Landlord's Agent's testimony that the Tenant remained in occupation until the end of January 2018 and failed to pay rent for the intervening months such that the sum of \$7,603.75 was outstanding. The Landlord is entitled to recover the **\$7,603.75** owing.

The Landlord's Agent testified that as the rental unit was not rentable at the end of the tenancy, the Landlord lost a further four months' in rent. I find this amount is recoverable from the Tenant and award the Landlord the **\$5,185.00** claimed.

As the Landlord has already been granted recovery of the \$100.00 filing fee pursuant to the January 3, 2018 Decision, I decline their request for compensation for the previous filing fee.

However, as the Landlord has been successful in the claim before me, I award them recovery of the **\$100.00** fee paid for the current Application.

Conclusion

The Landlord is entitled to the sum of **\$23,338.75** for the following:

Cleaning and garbage removal	\$10,500.00
Rent owing to January 2018	\$7,603.75
Lost rental revenue 4 months at \$1,296.25	\$5,185.00
Filing fee from current Application	\$100.00
TOTAL AWARDED	\$23,338.75

In furtherance of this, the Landlord is granted a Monetary Order in the amount of **\$23,337.75**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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 16, 2020

Residential Tenancy Branch