



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNR MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on June 26, 2020. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord attended the hearing. The Tenant did not attend the hearing. The Landlord stated that she sent the Tenant a copy of the Notice of Hearing and evidence by registered mail, on February 5, 2020, to the forwarding address provided to her at the time the Tenant moved out on January 14, 2019. Tracking information was provided into evidence. Pursuant to section 89 and 90 of the Act, I find the Tenant is deemed to have received these documents on February 10, 2020, the fifth day after their mailing.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for rent or for damage or loss under the Act?
- Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord provided a copy of the tenancy agreement which specifies:

- monthly rent is \$1,800.00, and is due on the 5th of the month.
- the Landlord holds a security deposit of \$1,100.00.

The Landlord explained that in November 2018, the Tenant stopped paying rent, and she obtained an order of possession around that time through our office. The Landlord stated that she had to hire a bailiff to come and physically remove the Tenant but the bailiff could not come until January 14, 2019, which is the day the Tenant was removed and the tenancy ended. The Landlord stated that the Tenant did no cleaning, damaged many items, failed to pay rent for the last couple of months, and caused her to incur bailiff fees, all of which she would like to recover at this hearing. The Landlord provided a worksheet speaking to these items, listed in the following order:

- 1) \$4,200.00 – unpaid rent

The Landlord stated that the Tenant failed to pay any rent from November 5, 2018, until January 14, 2019. The Landlord provided the previous file number for a hearing a dispute resolution she had in December of 2018. In that decision, she was granted an order of possession, which allowed her to get a bailiff of January 14, 2019, and it also provided her with a monetary order for November rent. The Landlord stated that she has not collected on what is owed, and the Tenant still owes this amount.

The Landlord stated that the Tenant owes \$1,800.00 for November 5, 2018, - December 4, 2018, plus \$1,800.00 for December 5, 2018 – January 4, 2019, plus \$600.00 for the 10 days the Tenant lived in the unit from January 5, 2019, until January 14, 2019.

- 2) \$100.00 - Filing Fee recovery

The Landlord stated that she was initially looking for \$250.00 for all the fees she had paid over the last several hearings to get rid of the Tenant, but she was now aware that only the filing fee for this hearing would be recoverable under this application. The Landlord adjusted her claim from \$250.00 to \$100.00 accordingly.

- 3) \$120.00 – Supreme Court Filing Fee

The Landlord provided a copy of the receipt she paid at the Supreme Court to file for her writ of possession, and to hire the bailiff. The Landlord wants to recover this amount as it was all due to unpaid rent and the subsequent eviction.

4) \$26.03 – Registered Mail Fees

The Landlord became aware after filing her application that registered mail fees are not recoverable and are considered a cost of doing business. The Landlord amended her claim accordingly, and this amount was not pursued at the hearing.

5) \$1,661.90 – Bailiff Fees

The Landlord provided a copy of the bailiff invoice, which she had to pay in order to have the Tenant physically removed on January 14, 2019.

6) \$400.00 – Strata bylaw violations

The Landlord provided copies of two strata violation letters showing the Tenant incurred these fines while he was a tenant of the unit. The Landlord stated she had to pay the amounts, and would like them reimbursed, as it was the Tenants fault.

7) \$439.27 - BC Hydro Utility Bills

The Landlord stated that the Tenant failed to pay his hydro bills from September 21, 2018, until the last day of his tenancy. As per the Tenancy Agreement, the Tenant was responsible for electricity charges, and the above amount was incurred, as per the bill provided into evidence by the Landlord.

8) \$2,958.00 - Painting, Repairs, and Cleaning (this total is broken down below)

The Landlord explained that she hired a contractor to complete the following repairs, which were caused by the Tenant.

- \$1,270.00 – Wall repair and repainting of walls.
- \$160.00 – door painting
- \$600.00 – Ceiling Painting

The Landlord stated that the unit required repainting due to many marks on the walls, and the excessive number of holes and drywall damage, as shown in the photos. The Landlord stated that the unit was repainted a couple of

years ago, and the only reason it needed repainting was due to the holes and all the damage. The holes required drywall patching, sanding and filling, which made repainting necessary.

- \$600.00 – Cleaning, and carpet cleaning
The Landlord stated that the Tenant did no cleaning before he left, and left piles of garbage, and debris everywhere. The Landlord stated that it took many hours to clean the unit, to removed the pet feces from the unit, and clean all the stains from the carpets. The Landlord provided some photos showing the stains and the general debris/dirt.
- \$195.00 – Washer repair
The Landlord explained that the washing machine was only 2 years old when the Tenant moved out, and he broke the door completely.
- \$38.00 – Door Lock replacement in bedroom
- \$95.00 – Utility Door replacement
The Landlord explained that the Tenant removed the door lock in the bedroom and it required replacement, and the Tenant also put holes in the utility door to the point where it required replacement, as per the photos.

9) \$852.42 – Dryer replacement

10) \$617.23 – Stove replacement

The Landlord stated that both of these appliances were replaced in 2017, right before the Tenant moved in. The Landlord stated that the Tenant had damaged the dryer, and it would not even turn on. The Landlord attempted to repair it, but had to replace the unit, as it was beyond repair. The Landlord stated that the Tenant also broke the stove and the oven. The Landlord explained that the glass top on the stove was completely cracked and broken, and the cost of that repair was more than the replacement cost. The Landlord provided receipts for both of these appliances.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or

tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

- 1) \$4,200.00 – unpaid rent

I note the Landlord has already received a monetary order for November rent (November 5- December 4, 2018). That amount is reflected in the monetary order issued at that time. As such, I am unable to include this amount in this proceeding, and will only consider rent not covered under that order, from December 5, 2018, until January 14, 2019. The decision and order from December 2018 are unchanged and remain. With respect to the remaining amount not covered under the previous decision and order, I find there is sufficient evidence to show that the Tenant owes and has failed to pay \$2,400.00 in rent (for December 5, 2018 till January 14, 2019). I award this amount.

- 2) \$100.00 – Filing Fee
- 3) \$120.00 – Supreme Court filing fee

I find the Tenant is responsible for these items, in full, as they are expenses incurred as a result of his non-compliance with the Act.

4) \$26.03 – Registered Mail Fees

This item was not pursued by the Landlord at the hearing, and will not be considered further.

5) \$1,661.90 – Bailiff Fees

I find there is sufficient evidence to show that the Tenant is liable for this amount, in full, as it was incurred to enforce an order of possession, which he failed to comply with. This amount is awarded in full.

6) \$400.00 – Strata bylaw violations

I find there is sufficient evidence to show the Tenant incurred these violations from the strata. I award this amount in full.

7) \$439.27 - BC Hydro Utility Bills

I note the Tenant is responsible for electricity consumption, and did not pay the required bills for the last few months of his tenancy. Based on the bills provided, I find the Landlord has sufficiently demonstrated that the Tenant is liable for this amount in full.

8) \$2,958.00 - Painting, Repairs, and Cleaning

I note the Landlord had to hire a contractor to perform significant wall repair, heavy cleaning, carpet cleaning, appliance repair, door replacement, and lock replacement. I note the Landlord also provided photos to show what the issues were. I find the Tenant is responsible for this amount in full. I decline to consider the Residential Tenancy Branch Policy Guideline regarding the useful life expectancy of any of these items, as the damage was well beyond reasonable wear and tear. For example, the walls and doors required repainting largely due to the significant drywall patching and repair that was required, not because of the age of the paint. I find the evidence, including the photos, and the testimony, sufficiently shows that the rental unit was left in substantial disrepair, which warrants the expenses claimed on this invoice. I award this amount, in full.

9) \$852.42 – Dryer replacement

10) \$617.23 – Stove replacement

I note that both of these appliances were new in 2017, only 2 years before the Tenant moved out. I accept the Landlord's statements and photos showing that the stove and the dryer were broken beyond repair, and were caused by the neglect of the Tenant. I find the evidence sufficiently demonstrates that the Tenant caused this damage, and I award these amounts in full, as per the receipts provided showing the replacement cost.

I authorize the Landlord to retain the security deposit to offset the money owed.

In summary, I find the Landlord is entitled to the following monetary order:

Item	Amount
Total for all items above	\$9,548.82
LESS: Security Deposit	\$1,100.00
Total Amount	\$8,448.82

Conclusion

The Landlord is granted a monetary order in the amount of **\$8,448.82**, as specified above. 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) and 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*.

Dated: June 29, 2020

Residential Tenancy Branch