



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNRL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on June 12, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage, compensation, or loss;
- a monetary order for unpaid rent;
- to retain the security deposit; and
- an order granting recovery of the filing fee

The hearing was scheduled for 9:30 AM on July 10, 2020 as a teleconference hearing. The Landlord attended the hearing at the appointed date and time. No one appeared for the Tenant. The conference call line remained open and was monitored for 14 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord and I were the only persons who had called into this teleconference.

The Landlord testified the Application and documentary evidence package was served to the Tenant by registered mail, email, and by placing a copy in the Tenant's mailbox on June 15, 2020. The Landlord provided the registered mail tracking information during the hearing in support. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on June 20, 2020, the fifth day after their registered mailing. The Tenant did not submit documentary evidence in response to the Application.

The Landlord was given an 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 Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to a monetary order for damage, compensation, or loss, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?
4. Is the Landlords entitled to retain the security deposit, pursuant to Section 72 and 38 of the *Act*?

Background and Evidence

The Landlord testified that the tenancy began on October 1, 2019. The Landlord stated that rent in the amount of \$1,600.00 is due to the Landlord by the first day of each month, as well as a security deposit in the amount of \$775.00 was paid to the Landlord. A tenancy agreement between the parties was submitted by the Landlord in support.

The Landlord testified that he has received several complaints regarding the Tenant violating the Strata Bylaws. The Landlord stated that at the start of the tenancy, the Tenant was provided with a copy of all the Strata Bylaws and that the Tenant signed a form K acknowledging that she is aware of the Bylaws and will abide by them.

The Landlord stated that he has received two strata fines in the amount of \$387.01. The Landlord said that the Tenant has a “beware of dog” sign in her window which contradicts the Strata Bylaws. The Landlord stated that the Tenant’s non compliance resulted in the Landlord receiving a \$100.00 fine. Also, the Landlord stated that the Tenant cut the safety rope belonging to the construction workers who were working on the exterior of the rental building. The Landlord stated that he received a Strata fine in the amount of \$287.01 to replace the safety rope. The Landlord provided a copy of the caution notices as well as the Strata demand notice outlining the fines in support.

The Landlord stated that he is also claiming \$5,650.00 in relation to unpaid rent. The Landlord provided a rent ledger which indicates that the Tenant was short paying rent in the following months;

Unpaid Rent Months	Amount
November 2019	\$200.00
March 2020	\$50.00
April 2020	\$1,600.00
May 2020	\$1,600.00
June 2020	\$600.00
July 2020	\$1,600.00
Total	\$5,650.00

If successful, the Landlord is seeking repayment for the filling fee in relation to the Application and to retain the Tenant's security deposit towards the claim. As noted above, the Tenant did not attend the hearing to dispute the Landlord's evidence.

Analysis

Based on the uncontested oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. 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 what was reasonable to minimize the damage or losses that were incurred.

With respect to the Landlord's claim seeking compensation for the Strata fines in the amount of \$387.01, I find that the Landlord has provided sufficient evidence to demonstrate that the Tenant breached the Strata Bylaws, which she agreed to abide by, which resulted in the Landlord incurring a loss as a result. As such, I find that the Landlord has established an entitlement to monetary compensation in the amount of \$387.01.

In relation to the Landlord's application for a monetary order for unpaid rent, I find that section 26(1) of the *Act* confirms: A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

There is no evidence before me to indicate that the Tenant had a right to deduct all or a portion of the rent. I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$5,650.00. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlord is entitled to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$5,416.00, which has been calculated as follows:

Claim	Amount
Strata Fines;	\$387.01
Unpaid rent:	\$5,650.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$775.00)
TOTAL:	\$5,362.01

Conclusion

The Landlord is granted a monetary order in the amount of \$5,362.01. This order must be served on the Tenant as soon as possible. If the Tenant fails to comply the monetary order it may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: July 10, 2020

Residential Tenancy Branch