



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNDC MNSD FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on June 4, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage;
- a monetary order for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord be permitted to apply the security deposit held to any monetary award granted; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing and was accompanied by B.Y., her spouse. Both the Landlord and B.Y. provided a solemn affirmatio testimony. The Tenant did not attend the hearing.

The Landlord testified the Notice of Dispute Resolution Proceeding package was served on the Tenant by registered mail on June 5, 2020. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find these documents are deemed to have been received on June 10, 2020. The Landlord also testified that further documentary evidence was uploaded to the Service Portal on the date of the hearing but was not served on the Tenant. The newly uploaded evidence has not been considered. The Tenant did not submit documentary evidence in response to the Application.

The Landlord was given 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
4. Is the Landlord entitled to retain the security deposit held in partial satisfaction of the claim?
5. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The tenancy agreement submitted into evidence confirms the tenancy began on January 1, 2019. The Landlord testified the Tenant continues to occupy the rental unit. Rent in the amount of \$1,900.00 per month is due on the first day of each month. The Tenant paid a security deposit in the amount of \$950.00, which the Landlord holds.

The Application discloses a claim for \$6,966.59 and is particularized in the Application. First, the Landlord claims \$7,100.00 for unpaid rent. The Landlord testified the Tenant did not pay rent when due on April 1, May 1, June 1, and July 1, 2020, but did make a one-time payment of \$500.00 on May 15, 2020. The amount claimed is based on the following calculation: $(\$1,900.00 \times 4 \text{ months}) - \$500.00 = \$7,100.00$.

Second, the Landlord claims \$1,366.99 for annual sewer and water use that that Landlord asserts is not included with rent. In support, the Landlord submitted invoices for the periods from January 1 to December 31, 2019 (\$644.42) and from January 1 to December 31, 2020 (\$653.85). The amounts claimed represent the amounts due when paid after the due date. The Landlord relies on the tenancy agreement which confirms that water, electricity, and heat are included in rent but states: "THE TENANT WILL ORDER HER OWN HYDRO, INTERNET & CABLE". In addition, the Landlord relied on paragraph 10 of the addendum which states: "The rent dose [sic] not include utilities,

tenant needs to register her own electricity, Internet, TV Cable, and Phone service and pay his own bills.”

Third, the Landlord claims \$300.00 for damage caused to a door frame when a police officer forcibly entered the rental unit on January 22, 2020. The Landlord testified the amount claimed is an estimate. The Landlord also testified there is further damage that was not realized when the claim was made.

Finally, the Landlord claims \$100.00 in recovery of the filing fee, and requests an order permitting her to retain the security deposit held in partial satisfaction of the claim.

The Tenant did not attend the hearing to dispute the Landlord’s evidence.

Analysis

Based on the unchallenged and affirmed 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*. 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 for \$7,100.00 for unpaid rent, I find that the Tenant has not paid rent as alleged by the Landlord. Therefore, I find the Landlord is entitled to a monetary award for unpaid rent due to July 31, 2020 in the amount of \$7,100.00.

With respect to the Landlord's claim for \$1,366.59 for water and sewer charges, I find there is insufficient evidence before me to conclude the tenancy agreement obligated the Tenant to pay these amounts. The tenancy agreement, addendum, and the Landlord's testimony were not sufficiently consistent to grant the relief sought. For example, the tenancy agreement indicates water, electricity and heat are included in rent. However, the addendum indicates that the Tenant is responsible for utilities, including BC Hydro. Neither the tenancy agreement nor the addendum address sewer charges specifically or specify when payment of these charges are due. In addition, I note the Landlord did not make a claim against these charges for 18 months after the tenancy began. As a result, I find the Landlord has failed to minimize her losses as required under section 7 of the *Act*. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$300.00 for damage caused to a door frame, I find there is insufficient evidence before me to grant the relief sought. The Landlord confirmed this was based on an estimate only. This aspect of the Landlord's claim is dismissed.

Having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. As the tenancy is ongoing, I order that the Landlord continue to hold the security deposit in trust until the end of the tenancy, at which time it must be dealt with in accordance with the *Act*.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$7,200.00, which is comprised of \$7,100.00 in unpaid rent and \$100.00 in recovery of the filing fee.

Conclusion

The Landlord is granted a monetary order in the amount of \$7,200.00. The order 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 30, 2020

Residential Tenancy Branch