



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPC, MNRL-S, FFL**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession under a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to sections 47 and 55;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended the hearing and had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenants did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 30 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenants was provided.

The landlord testified the landlord served the Notice of Hearing and Application for Dispute Resolution by posting on the tenants' door on August 4, 2020, thereby effecting service 3 days later, on August 7, 2020. I find the landlord served the tenants pursuant to the Act as the landlord testified.

At the outset of the hearing, the landlord testified that he withdrew his application for an Order of Possession as it had been granted on August 20, 2020 under the file number referenced on the first page. The tenants had vacated the unit.

The landlord requested authorization to amend his claim to include outstanding rent which had accumulated since the claim was filed in July 2020. The landlord explained that the tenant has not paid rent for the months of July and August 2020. The landlord anticipated that because of the damage to the unit, it would not be possible to rent the unit during September 2020. Accordingly, the landlord claimed an additional two months rent for August and September 2020.

Pursuant to my authority under section 64(3)(c) of the *Act*, I find it would not be prejudicial to the respondent to amend the claim as requested. Accordingly, I amended the landlord's application to include rent for August and September 2020.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The landlord provided uncontradicted testimony as the tenants did not attend the hearing.

The tenancy began on Jul 19, 2019. Rent is \$1,500.00 monthly payable on the first of the month. At the beginning of the tenancy, the tenants provided a security deposit of \$750.00 which the landlord holds. The landlord submitted a copy of the tenancy agreement as evidence.

The unit is a basement suite in the landlord's residence. The landlord testified that he believed from personal observation and from neighbours' complaints that there had been ongoing criminal activity involving drugs and other illegal behaviour. The landlord stated that the police had been to the unit many times because the tenants were suspected of drug dealing.

The landlord testified that he posted a One Month Notice to End Tenancy for Cause on July 2, 2020 which the tenants removed. An Order of Possession for an expedited application was granted on August 20, 2020. The tenants vacated.

The landlord submitted testimony supported by videos about the condition of the unit when the tenants vacated as follows. They left the unit in a filthy and damaged condition. The evidence showed an oven so soiled that the landlord testified it had to be replaced. The videos showed an insect infested unit from mounds of decaying garbage and the landlord sprayed insecticide. Urine-soiled mattresses leaned against the wall of the living room. The landlord testified that a doors and windows had been broken open. The tenants smoked in the unit. There was residue of drugs in the unit. Repairs were ongoing.

The landlord submitted no receipts. However, he testified that his estimate of cost and time was at least \$750.00, the amount for which he requested compensation.

The landlord stated that the unit could not be occupied in September 2020 until smoke remediation and damages were completed. The tenants had not paid rent for July and August 2020. Accordingly, the landlord requested compensation for 3 months rent.

The landlord's claim is summarized as follows:

ITEM	AMOUNT
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Rent – 3 months	\$4,500.00
Damages to unit and cleaning (estimate)	\$750.00
(Less security deposit)	(\$750.00)
TOTAL CLAIM	\$4,500.00

Analysis

I have considered all the submissions and refer only to key facts.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement.

Section 7(1) of the Act provided 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.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

1. The claimant must prove the existence of the damage or loss.
2. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.
3. Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.
4. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

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

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award.

I have considered all the evidence submitted by the landlord. The tenants did not attend the hearing and the landlord's testimony is uncontradicted. I find the landlord's testimony credible that the unit needed cleaning and repairs/garbage removal. I accept that he incurred the time and expenses to which he testified and \$750.00 is a modest estimate. The landlord articulately described the condition in which the tenants left the unit supported by videos.

Taking into account the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the unit needed substantial cleaning when the

tenant vacated, the tenant is responsible for the lack of cleanliness, the landlord incurred the amount and time claimed in cleaning expenses, and the landlord took all reasonable steps to mitigate expenses.

As well, in considering all the above-mentioned evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that unit needed repairs/garbage removal when the tenant vacated, the tenant is responsible for the damage and debris, the landlord incurred the amount of time claimed in repairs/garbage removal, and the landlord took all reasonable steps to mitigate expenses.

I find the landlord is entitled to a monetary award in the amount requested for cleaning and repairs. I award the landlord his claim of \$750.00 in this regard which in my assessment is a modest and well-supported claim.

I accept the landlord's testimony that the tenants vacated the unit leaving outstanding rent in the amount claimed. Given the condition in which the tenants left the unit, I accept the landlord's testimony that the unit cannot be rented until the end of September 2020. I find the landlord's expectations reasonable that it will take several weeks to clean, disinfect and repair the unit. I award the landlord his claim in this regard.

In summary, I find the landlord has provided credible testimony as to all the claims and I grant the landlord a monetary award as requested.

As the landlord has been successful in this matter, I award the landlord reimbursement of the filing fee in the amount of \$100.00.

I grant a monetary order to the landlord in the amount of **\$4,135.00**. My award to the landlord is summarized as follows:

ITEM	AMOUNT
Rent – 3 months	\$4,500.00
Damages to unit and cleaning (estimate)	\$750.00
(Less security deposit)	(\$750.00)
TOTAL CLAIM	\$4,500.00

I also award reimbursement of the filing fee of \$100.00 for a total award of \$4,600.00.

Conclusion

I grant the landlord a Monetary Order of \$4,600.00. this Order must be served on the tenants. This Order may be filed and enforced by the Courts of the Province of British Columbia.

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: August 28, 2020

Residential Tenancy Branch