



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1147058 B.C. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDL-S, MNDCL-S, MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- and a monetary order for money owed or compensation for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:07 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The owner and landlord's agent, NS ("landlord"), attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. 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 owner, landlord's agent, and I were the only ones who had called into this teleconference.

The landlord's agent testified that the tenant was served with the landlord's application for dispute resolution hearing package and evidence on April 27, 2020 by way of email to an email address that was used in the past for correspondence related to this tenancy. In accordance with sections 88, 89, 90, and the Order of the Director dated March 30, 2020, I find the landlord's documents deemed served to the tenant on April 30, 2020, 3 days after the documents were emailed. The landlords' agent testified that an amendment and additional evidence was served on the tenant to the tenant's mailbox on August 12, 2020. In accordance with sections 88 and 90 of the *Act*, I find the

tenant deemed served with the documents on August 15, 2020, 3 days after service. The tenant did not submit any written evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for money owed or losses?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on August 1, 2019, and was to end on July 31, 2020. Monthly rent was set at \$1,600.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$800.00 for this tenancy. After a previous hearing was held on March 16, 2020, the landlord was granted an Order of Possession by the Arbitrator on March 17, 2020, as well as the right to deduct \$100.00 from the security deposit in satisfaction of the filing fee. The landlord continues to hold the remaining \$700.00. The tenant moved out on April 10, 2020.

The landlord provided the following list of damages and losses for their monetary claim, along with a statement of facts and associated invoices in support of their claim.

Item	Amount
Late Fee- February 2020 rent (25.00 + tax)	\$26.25
Late Fees for March 17, April 1 and April 16 (\$25.00 x 3 + GST)	\$78.75
Pro-rated rent for using and accessing garage April 11, 2020 until end of May 2020 (\$700.00/month)	1,143.33
Unpaid Rent for March 2020	800.00
Unpaid Utilities – electricity	636.14
Overholding April 1-10, 2020	586.67
Garage ceiling Damage	131.25

Cost of repainting Garage	178.00
Wall Damage	210.00
Lock replacement	89.25
Project Management Fees	95.85
Fee to owners for cost of preparing for arbitration	1,050.00
Fee to owners related to locating tenant	273.00
Filing Fee	100.00
Total Monetary Order Requested	\$5,398.49

The landlord submitted a copy of the tenancy agreement which states that the tenant will be charged \$25.00 for late rent payments. In the decision dated March 17, 2020, the Arbitrator determined that the monthly rent was set at \$1,600.00 per month, and the tenant had only paid \$1,200.00 towards the rent for February and March 2020. The landlord is seeking a \$25.00 late fee for the months of February and March 2020. The landlord testified that the tenant failed to pay the remaining \$800.00 for March 2020, or any rent for April 2020 despite moving out on April 10, 2020. The landlord is also seeking \$586.67 for overholding until April 10, 2020.

The landlord applied for late fees in the amount of \$25.00 plus GST for February 1, 2020, March 17, April 1 and April 16, 2020.

The landlord testified that the tenant has failed to pay the outstanding utilities in the amount of \$636.14 for this tenancy, and is seeking a monetary order for that amount.

The landlord testified that the tenant retained the keys, and kept accessing the garage where he had stored his personal belongings until the end of May 2020. The landlord testified that in previous tenancies, the rent for using the garage was \$700.00, and used that amount to assess the cost of overholding. The landlord is seeking a monetary order from the tenant for failing to vacate the garage, and the continued use and access of the garage for his personal use.

The landlord testified that the tenant returned the keys, but made duplicates so he could continue to access the property. The landlord testified that they had to replace the locks to prevent the tenant from continuing to access the property. The landlord is seeking a monetary order for the cost of rekeying.

The landlord testified that the tenant failed to leave the home in reasonably undamaged condition, and is seeking monetary orders to repair the damage left by the tenant as

listed above. The landlord submitted quotes for the repairs to the garage ceiling, drywall, repainting, and wall damage to the home where the tenant had mounted speakers and a television. The landlord included in their evidentiary materials two final notices for a move-out inspection, which the tenant failed to attend.

Lastly, the landlord is seeking reimbursement for the fees he had to pay his manager for the preparation for the dispute resolution applications and hearings, as well as the cost of locating the tenant.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) 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.

The landlord provided undisputed evidence that the tenant failed to pay the remaining outstanding rent for March 2020, nor did the tenant pay any rent for the period of April 1-10, 2020. Therefore, I find that the landlord is entitled to \$800.00 in outstanding rent for March 2020, and \$533.33 (\$1,600.00/30 days * 10 days) for overholding for the month of April 10, 2020.

Section 7(1)(d) of Residential Tenancy Regulation allows for “an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent.” I am satisfied that the tenant was late in paying the outstanding rent for the months of February, March, and April 2020. I note that the landlord applied for recovery of the GST for these late payments, and is seeking two late fees for the month of April 2020. As the Regulation only allows for a maximum administration fee of \$25.00 for each month the tenant was late, I allow the landlord to recover a one time late fee of

\$25.00 for the months of February, March, and April 2020, totaling \$75.00 for the three months. The landlord's application to recover the GST or additional claim for a second late fee for April 2020 is dismissed without leave to reapply.

The landlord also provided undisputed evidence that the tenant failed to pay \$636.14 in outstanding utilities. Accordingly, I allow the landlord a monetary order for \$636.14 for the outstanding utilities.

The landlord is seeking a monetary order in the amount of \$1,143.33, which the landlord assessed to be the pro-rated rent for the use of the garage based on the calculation that the tenant continued to access the garage for the period of April 11, 2020 through May 2020. The landlord used the calculation of \$700.00 per month as this was the monthly rent the landlord charged in the past for the use of the garage. Although I accept that the tenant continued to access the landlord's property after the tenancy had already ended, the burden of proof is still on the landlord to support the value of their loss, and that this loss is due to the other party's breach. In this case I am not satisfied that the landlord provided sufficient evidence to support that they suffered a monetary loss in the amount of \$1,143.33 due to the tenant's actions. I dismiss this portion of the landlord's monetary claim without leave to reapply.

I am satisfied that the landlord suffered a loss in the amount of \$89.25 for rekeying, which was necessary as the tenant kept on accessing the property. Accordingly, I allow the landlord a monetary order for this loss.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I find that the landlord provided two opportunities to attend a final move-out inspection, which the tenant did not attend. I find that the landlord suffered losses in repairing the damage left by the tenant, and accordingly, I allow the landlord's monetary claims for these repairs.

The landlord submitted a monetary claim in the amount of \$273.00 to recover the cost of locating the tenant. I am satisfied that this claim is justified as it was a necessary expense in order for the landlord to locate the tenant. Accordingly, I allow the landlord a monetary order in the amount of \$273.00.

The landlord also submitted monetary claims in the amount of \$1,050.00 which was charged by their property manager for the cost of preparing for arbitration. The landlord is also seeking a monetary order for the fee charged by the property manager in the

amount of \$95.85 to cover the cost of managing the repairs. As stated above, landlord has a duty to mitigate their losses. I find that the landlord made a business decision to employ the services of a property manager, and that these losses claimed are associated with this decision rather than directly due the tenant's failure to comply with the *Act*. Accordingly, I dismiss these two claims without leave to reapply.

I find that the landlord's Application has merit and that the landlord is entitled to recover the fee for filing this Application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the remaining portion of the tenant's security deposit partial satisfaction of the monetary claim.

Conclusion

I issue a Monetary Order in the amount of **\$2,325.97** in the landlord's favour under the following terms which allows a monetary award for damage and losses caused by the tenant, plus recovery of the filing fee. I allow the landlord to retain the remaining \$700.00 of the tenant's security deposit in partial satisfaction of the monetary claim.

Item	Amount
Late Fees for February, March, and April 2020	\$75.00
Unpaid Rent for March 2020	800.00
Unpaid Utilities – electricity	636.14
Overholding April 1-10, 2020	533.33
Garage ceiling Damage	131.25
Cost of repainting Garage	178.00
Wall Damage	210.00
Lock replacement	89.25
Fee to owners related to locating tenant	273.00
Filing Fee	100.00
Less Remaining Security Deposit Held by Landlord	-700.00
Total Monetary Order	\$2,325.97

The landlord is provided with this Order in the above terms and the tenants must be served with a copy of this Order as soon as possible. Should the tenant fail to comply

with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the remainder of the landlord's monetary claims without leave to reapply.

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: September 16, 2020

Residential Tenancy Branch