



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pine Springs
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL, MNDCL, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on June 24, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

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

The hearing was scheduled for 1:30pm on October 15, 2020 as a teleconference hearing. Only the Landlord's Agent appeared and provided affirmed testimony. No one appeared for the Tenants. The conference call line remained open and was monitored for 17 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 Landlords' Agent and I were the only persons who had called into this teleconference.

The Landlord's Agent testified the Application and documentary evidence package was served to the Tenants in person on June 25, 2020. The Landlord provided a witnessed proof of service 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 Tenants are deemed to have been served with the Application and documentary evidence on June 25, 2020.

The Landlord's Agent 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 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

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

Background and Evidence

The Landlords' Agent testified that the tenancy began on November 1, 2019. During the tenancy, the Tenants were required to pay rent in the amount of \$950.00 to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$375.00 which the Landlord continues to hold. The Landlords' Agent stated that the tenancy ended on September 1, 2020.

The Landlord is claiming \$840.00 in relation to repairing two broken windows in the rental unit. The Landlord provided a copy of the condition inspection report which indicates that two windows were noted as being broken at the end of the tenancy. The Landlord also provided a receipt for the cost of repairing the windows.

The Landlord is claiming \$1,230.40 in relation to removing and disposing of the garbage left behind by the Tenants in the rental unit at the end of the tenancy. The Landlord provided a copy of the receipt in support.

The Landlord is claiming for loss of rent from March until August 2020. The Landlord's Agent stated that the Tenants stopped paying rent in March 2020 and that the Landlord received no rent from the Tenants before the Tenants were removed from the rental unit on September 1, 2020 by the Court Bailiffs. As such, the Landlord is claiming \$5,700.00 in loss of rent from March to August 2020.

Lastly, the Landlord's Agent stated that the Tenants did not comply with an Order of Possession which had been granted in a previous decision dated June 1, 2020. The

Landlord's Agent stated that the Landlord was required to seek the Tenants removal through gaining a Writ of Possession and employing the services of a Bailiff to gain vacant possession of the rental unit. The Landlord is claiming \$3,325.00 which was the final cost of removing the Tenants and ultimately ending the tenancy on September 1, 2020. The Landlord provided a copy of the receipt in support.

If successful, the Landlord is also seeking the return of the filing fee paid to make the Application. No one appeared for the Tenant to dispute the Landlords' claims.

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*. 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 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 what was reasonable to minimize the damage or losses that were incurred.

Section 37(2) When a tenant vacates a rental unit, the tenant must;

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and**
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.**

The Landlord is claiming \$840.00 in relation to repairing two broken windows in the rental unit. I find that the Landlord has provided sufficient evidence to demonstrate that the windows were broken during the tenancy as well as sufficient evidence to support the value of the loss associated with replacing the windows. As such, I find that the Landlord is entitled to compensation in the amount of **\$840.00**.

The Landlord is claiming \$1,230.40 in relation to removing and disposing of the garbage left behind by the Tenants in the rental unit at the end of the tenancy. I find that the Landlord has provided sufficient evidence to demonstrate the Tenants breached the Act by not returning the rental unit reasonably clean. I am satisfied that the Landlord was required to dispose of garbage left by the Tenants. As such, I find that the Landlord is entitled to compensation in the amount of **\$1,230.40**.

The Landlord is claiming for loss of rent from March until August 2020 in the amount of \$5,700.00. 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.

As there is no evidence before me that the Tenants had the right to deduct all of the rent, I find that the Landlord is entitled to compensation in the amount of **\$5,700.00** for the loss of rent from March August 2020.

The Landlord is claiming \$3,325.00 which was the final cost of employing a Bailiff to remove the Tenants and ultimately ending the tenancy on September 1, 2020. I accept that the Landlord was successful in being granted an Order of Possession on June 1, 2020. I further accept that the Tenants did not comply with this Order and did not vacate the rental unit, requiring the Landlord to employ a Bailiff to remove the Tenants. As such, I find that the Landlord is entitled to compensation in the amount of **\$3,325.00**.

Having been successful, I find the Landlord is entitled to recover the **\$100.00** filing fee paid to make the Application. I also find it appropriate in the circumstances to order that the Landlord retain the security deposit in the amount of \$375.00 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 **\$10,820.40** which has been calculated below;

Claim	Amount
Unpaid rent:	\$5,700.00
Window Replacement:	\$840.00
Garbage Removal:	\$1,230.40
Bailiff Service:	\$3,325.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-(<i>\$375.00</i>)
TOTAL:	\$10,820.40

Conclusion

The Landlord has established an entitlement to monetary compensation and have been provided with a monetary order in the amount of **\$10,820.40**. The order should be served to the Tenants as soon as possible and 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: October 27, 2020

Residential Tenancy Branch