



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, MNRL-S, MNDCL-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*;
- 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 testified she sent the Notice of Hearing and evidentiary package to the tenant by email on June 30, 2020, pursuant to the RTB Director's Order of March 30, 2020.

The Director's Order stated that the documents are deemed served if emailed to the email address that the person to whom the document is to be given or served has routinely used to correspond about tenancy matters from an email address that the person giving or serving the document has routinely used for such correspondence, in which case the document is deemed to have been received three days after it was emailed.

The landlord testified the documents were emailed to the email address that the tenants have routinely used to correspond about tenancy matters from an email address that the landlord has routinely used for such correspondence.

The landlord testified she also served the documents by personal service on the tenants on June 30, 2020.

Further to the landlord's testimony, I find the landlord served the tenants with the documents on July 3, 2020 pursuant to the Act and Director's Order.

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 the following uncontradicted testimony. The tenancy began on December 8, 2019 for monthly rent of \$1,100.00 payable on the first of the month. The tenant provided a security deposit of \$550.00 which the landlord holds. The landlord submitted a copy of the signed tenancy agreement.

The landlord stated that this is the third RTB proceeding with respect to the tenancy; reference to the previous hearings are on the first page of this Decision. On March 31, 2020, the landlord obtained an Order of Possession and Monetary Order for rent for February and March 2020.

The landlord testified that the tenants did not move out nor did they pay rent after service of the Orders. The landlord accordingly obtained the services of the bailiff who removed the tenants from the property on July 13, 2020; the landlord testified the

landlord paid bailiff fees of \$633.00 and a filing fee of \$100.00 for the Writ of Possession.

The landlord stated that because of the circumstances of the forcible removal of the tenants, no condition inspection on moving out took place. The landlord described dirty conditions and damage in the unit caused by the tenants; as a result, the landlord incurred cleaning expenses of \$600.00 and repair expenses of \$1,625.00.

The landlord filed this application prior to the tenants' moving out and requested that the security deposit held by the landlord be applied to the award.

The landlord clarified the landlord's claim as follows:

ITEM	AMOUNT
Rent – 4 months x \$1,100.00 (April, May, June and July 2020)	\$4,400.00
Cleaning	\$600.00
Repairs	\$1,625.00
Bailiff fees	\$633.00
Writ of Possession	\$100.00
Filing fee	\$100.00
(Less Security deposit)	(\$550.00)
TOTAL CLAIM	\$6,908.00

The landlord submitted estimates of the expenses at the time of filing of the application along with receipts and a Monetary Work Order. At the hearing, the landlord testified to the actual expenses subsequently incurred (set out in the table) and revised her claim accordingly.

The landlord requested a Monetary Order of **\$6,908.00**.

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.

Rent

The landlord testified the tenants did not pay rent for the final four months of the tenancy, April, May, June and July 2020 during which time the tenants resided in the unit. The tenant is responsible to reimburse the landlord for rent for those four months pursuant to the tenancy agreement submitted as evidence and the Act.

I am satisfied based on the landlord's uncontradicted testimony and evidence that the tenant is responsible for outstanding rent as claimed.

I accordingly find the landlord has met the burden of proof with respect to this aspect of the claim. I allow the landlord an award for outstanding rent as claimed.

Compensation for damages

I have considered all the evidence submitted by the landlord. I accept the landlord's credible testimony.

I find that the unit needed cleaning and repairs as described by the landlord. I find that the landlord incurred the expenses for cleaning and repairs as testified.

I find, as testified, that the tenants are responsible for the condition of the unit in breach of their responsibility under the Act.

I find the expenses are reasonable in the circumstances according to the facts as I understand them.

I accept the landlord's testimony that repairs were conducted in a timely and efficient manner. I find the landlord took all reasonable steps to mitigate expenses.

Bailiff and Writ of Possession

I accept the landlord's credible testimony that the tenants failed to vacate the unit when served with an Order of Possession as a result of which the landlord incurred bailiff expenses and a fee for obtaining a Writ of Possession in the amounts claimed. I find that these expenses stemmed directly from a violation of the agreement or a contravention on the part of the other party as the tenants failed to vacate as required by an Order of Possession.

I accept that the landlord incurred the expenses claimed and the landlord took all reasonable steps to minimize expenses.

Filing fee

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

Security deposit

The landlord is entitled to apply the security deposit to the monetary award pursuant to section 72.

In conclusion, I find the landlord has met the burden of proof on a balance of probabilities with respect to the landlord's claims and is entitled to all expenses claimed as follows:

ITEM	AMOUNT
Rent – 4 months x \$1,100.00 (April, May, June and July 2020)	\$4,400.00
Cleaning	\$600.00
Repairs	\$1,625.00
Bailiff fees	\$633.00
Writ of Possession	\$100.00

Filing fee	\$100.00
(Less Security deposit)	(\$550.00)
TOTAL CLAIM	\$6,908.00

Summary

I grant a monetary order to the landlord in the amount of **\$6,908.00**.

Conclusion

I grant a monetary order to the landlord in the amount of **\$6,908.00**. This order must be served on the tenants. This order may be filed and enforced in 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: October 16, 2020

Residential Tenancy Branch