



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on June 25, 2020 (the “Application”). The Landlord sought the following:

- Compensation for monetary loss or other money owed;
- To recover unpaid rent;
- To keep the security deposit; and
- Reimbursement for the filing fee.

The Landlord appeared at the hearing with his daughter to assist.

The Tenants appeared at the hearing. The Tenants called the Witness during the hearing. The Witness was not involved in the conference call until required. During the hearing, the Tenants seemed to have difficulty understanding and answering questions given a language barrier. I asked the Tenants if there was someone who could join the hearing to assist them. The Tenants’ son joined the hearing for a short period of time but then left due to other commitments.

I explained the hearing process to the parties who did not have questions when asked. The Landlord, Tenants, Tenants’ son and Witness provided affirmed testimony.

The Landlord sought to increase the monetary amount claimed in the Application at the hearing. I did not allow the Landlord to amend the Application given the Landlord had not filed an amendment as required. Further, the increased amount was not reflected in the Monetary Order Worksheet and I was not satisfied the Tenants had notice that the Landlord was going to seek an increased amount.

The Landlord confirmed he was awarded unpaid rent for February and March in a prior decision and therefore is not seeking unpaid rent for these months in the Application. The Landlord also confirmed he was permitted to keep the security deposit towards the monetary amount awarded in the prior decision and therefore confirmed he wished to withdraw the request in the Application to keep the security deposit.

The Landlord submitted evidence prior to the hearing. The Tenants submitted information about the Witness but no other evidence. I addressed service of the hearing package and evidence.

The Tenants' son confirmed the Tenants received the hearing package. The Tenants did not confirm that they received the Landlord's evidence.

The Landlord testified that he served his evidence on Tenant M.S. in person in the first week of July. The Landlord testified that the evidence was with the hearing package.

Tenant M.S. denied the above and testified that the Tenants received the hearing package posted to their door in July.

The Landlord did not submit any evidence to support his testimony about service.

Pursuant to rule 3.14 of the Rules of Procedure (the "Rules"), the Landlord was required to serve his evidence on the Tenants not less than 14 days before the hearing.

Pursuant to rule 3.5 of the Rules, the Landlord has the onus to prove he served his evidence on the Tenants.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met their onus of proof.

Here, the Landlord testified that he served his evidence on the Tenants with the hearing package. The Tenants deny this. The Landlord has not submitted any evidence to support his testimony. Therefore, the Landlord has failed to prove service.

Rule 3.17 of the Rules states:

...

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established [in the *Residential Tenancy Act* (the “Act”) or Rules] provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice...

The Landlord submitted the following evidence:

- A receipt for legal fees;
- A Monetary Order from the previous file;
- A Monetary Order Worksheet; and
- Three pages of a written tenancy agreement.

The Monetary Order is admissible as it is not evidence but a prior RTB decision and part of RTB records.

The Monetary Order Worksheet is admissible as it simply sets out the Landlord’s claim which the Tenants confirmed they understood during the hearing.

The tenancy agreement is admissible as it is signed by one of the Tenants.

There is no prejudice to the Tenants in admitting the above given the nature of these documents.

The receipt for legal fees is excluded as I am not satisfied it was served on the Tenants and am not satisfied it is a document or information the Tenants would otherwise be aware of.

The Landlord testified that he did not receive the information about the Witness from the Tenants. I do not find this relevant as parties are not required to serve a witness list on the other party and are entitled to call whomever they choose as a witness at the hearing.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all oral testimony and the

admissible documentary evidence. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for monetary loss or other money owed?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following:

Item	Description	Amount
1	Garbage chute	\$500.00
2	Rent for April, May and June	\$6,390.00
3	Legal fees	\$600.00
4	Filing fee	\$100.00
	TOTAL	\$7,590.00

The parties agreed on the following. There was a written tenancy agreement between the Landlord and Tenants. The tenancy started October 02, 2017 and was for a fixed term of one year. The tenancy then became a month-to-month tenancy. Rent from January of 2019 to the end of the tenancy was \$2,130.00 which included \$2,100.00 for rent and \$30.00 for an extra parking spot. The Tenants paid a \$1,000.00 security deposit and no pet damage deposit.

The parties agreed the Tenants vacated the rental unit June 30, 2020.

The parties provided the following testimony and submissions in relation to the amounts claimed.

1 Garbage chute \$500.00

The Landlord sought \$500.00 for a bill he paid in relation to the garbage chute as a result of the Tenants, or someone allowed in the rental unit by the Tenants, stuffing a large box down the garbage chute. The Landlord testified that he paid \$1,500.00 to

have someone unplug the chute. The Landlord testified that the Tenants paid him \$1,000.00 and still owe him \$500.00.

Tenant M.S. agreed the Tenants owe the Landlord \$500.00 for this and said the Tenants are willing to pay the Landlord this amount.

2 Rent for April, May and June \$6,390.00

The Landlord testified that the Tenants refused to pay rent for April, May and June.

Tenant M.S. testified that the Tenants did not pay any rent after January. When asked why, Tenant M.S. said because the Landlord took the Tenants to court. Tenant M.S. talked about the Landlord serving notices to end tenancy and questioned why the Landlord issued the Tenants a One Month Notice. Tenant M.S. referred to the Landlord finishing or breaking the agreement.

I note that it was very difficult to understand Tenant M.S.'s testimony on this point. I attempted to confirm his testimony a number of times.

3 Legal fees \$600.00

The Landlord testified as follows. He had to retain a lawyer to evict the Tenants. He paid \$600.00 to the lawyer as a deposit. He had to retain a lawyer because the Tenants were not going to leave. He tried to have the Tenants evicted without retaining a lawyer, but nothing was being done because of the pandemic. The lawyer took steps to enforce the Order of Possession in Small Claims Court.

Tenant M.S. testified as follows. The Landlord broke the agreement in January. He does not agree with paying legal fees.

Again, the testimony of Tenant M.S. on this point was not clear.

Witness

The Witness testified as follows. The only thing he knows is that the Tenants were to give money to the Landlord, but the Landlord ignored them and said, "see you in court".

I asked the Witness what month this occurred. The Witness said he did not have this information. The Witness then referred to a broken window.

In response to questions from the Landlord, the Witness testified that his recollection relates to the Tenants paying for a broken window.

Analysis

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

1 Garbage chute \$500.00

Tenant M.S. agreed to pay the Landlord this amount and therefore the Landlord is awarded this amount.

2 Rent for April, May and June \$6,390.00

Section 7 of the *Act* states that if tenants do not comply with the *Act* or their tenancy agreement, they must compensate the landlord for loss that results.

Section 26(1) of the *Act* states:

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.

Section 57 of the *Act* states:

(2) The landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.

(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.
(emphasis added)

The parties agreed the Tenants were required to pay \$2,130.00 in rent each month from January of 2019 to the end of the tenancy.

Tenant M.S. acknowledged the Tenants did not pay any rent after January. I understand this to be January of 2020.

There are only six reasons tenants can withhold rent under the *Act* which are:

1. When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the *Act*);
2. When section 33 of the *Act* in relation to emergency repairs applies;
3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the *Act*);
4. When the landlord issues the tenants a notice to end tenancy under section 49 of the *Act* for landlord's use of property (section 51 of the *Act*);
5. When an arbitrator allows the tenants to withhold rent (section 65(1)(f) of the *Act*); and
6. When the landlord consents to the tenants withholding rent.

Tenant M.S. did not mention any of these six reasons as the reason for not paying rent since January.

The reasons for not paying rent provided by Tenant M.S., including that the Landlord took the Tenants to court, the Landlord served notices to end tenancy on the Tenants and the Landlord finishing or breaking the agreement, are not valid reasons under the *Act* to withhold rent. I note that Tenant M.S. did not say that the Landlord issued a notice to end tenancy pursuant to section 49 of the *Act* and there is no evidence before me that the Landlord did this.

I am satisfied the Tenants did not have authority under the *Act* to withhold rent.

The Tenants were required to pay rent while they resided in the rental unit. I am satisfied the Tenants resided in the rental unit until June 30, 2020 as the parties agreed this is when the Tenants vacated. The Tenants are therefore required to pay rent for April, May and June.

I am satisfied the Tenants owe the Landlord \$6,390.00 for rent for April, May and June of 2020.

3 Legal fees \$600.00

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the other for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I decline to award the Landlord the cost of legal fees for three reasons. First, there is no admissible documentary evidence before me showing the cost of the legal fees.

Second, there is no documentary evidence before me showing how much the lawyer charged for dealing specifically with the Order of Possession issue or what the lawyer did in this regard. Third, the Landlord testified that the legal fees relate to the lawyer acting for him in Small Claims Court. Orders of Possession are not enforced in Small Claims Court, they are enforced in BC Supreme Court. Therefore, I am not satisfied the lawyer took steps to enforce the Order of Possession or that the legal fees claimed relate to this. This request is dismissed without leave to re-apply.

4 Filing fee \$100.00

Given the Landlord was partially successful in the Application, I award the Landlord \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

Summary

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Garbage chute	\$500.00
2	Rent for April, May and June	\$6,390.00
3	Legal fees	-
4	Filing fee	\$100.00
	TOTAL	\$6,990.00

The Landlord is entitled to monetary compensation in the amount of \$6,990.00. Pursuant to section 67 of the *Act*, the Landlord is issued a Monetary Order in this amount.

Conclusion

The Landlord is entitled to monetary compensation in the amount of \$6,990.00 and I issue the Landlord a Monetary Order in this amount. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 21, 2020

Residential Tenancy Branch