



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for unpaid rent in the amount of \$1,600.00; and for a monetary order for damages of \$1,275.00; and a monetary order for damage or compensation for damage under the Act in the amount of \$7,085.73, retaining the security deposit for these claims; and to recover the \$100.00 cost of her Application filing fee.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenants. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave her an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenants did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that she served the Tenants with the Notice of Hearing documents by Canada Post registered mail, sent on July 20, 2020. The Landlord provided Canada Post tracking numbers as evidence of service. I find that the Tenants were deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenants.

Preliminary and Procedural Matters

The Landlord provided her email address in the Application and she provided the Tenants' forwarding address in the hearing. The Landlord confirmed her understanding that the Decision would be emailed to her and mailed to the Tenants, and any Orders would be sent to the appropriate Party.

At the outset of the hearing, I advised the Landlord that pursuant to Rule 7.4, I would only consider her written or documentary evidence to which she pointed or directed me in the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Landlord said that the residential property is a duplex, which has five bedrooms and two bathrooms between the two sides. The Landlord said that the Tenants rented both sides for this tenancy.

The Landlord submitted a tenancy agreement, which sets out, and which the Landlord confirmed, that the fixed-term tenancy began on March 29, 2018, it ran to August 31, 2018 and it then operated on a month-to-month basis. The tenancy agreement required the Tenants to pay the Landlord a monthly rent of \$1,600.00, due on the first day of each month. The Landlord confirmed that the Tenants paid her a security deposit of \$800.00, and no pet damage deposit.

The Landlord said that the tenancy ended, because the Tenants failed to pay rent in December 2019, January 2020, and February 2020. The Landlord said that the Tenants gave her numerous excuses as to why they were not paying rent; however, the Landlord served them with a 10 Day Notice to End the Tenancy for Unpaid Rent. When the Tenants would not pay the rent owing or vacate the rental unit, the Landlord said she applied for dispute resolution at the RTB and was awarded an Order of Possession for the rental unit. The Landlord said that she drove by the rental unit a couple of times after having served them with the Order of Possession by registered mail, but she said everything was the same – their cars were still there, and the lights were on. Therefore, the Landlord said she obtained a Writ of Possession from the B.C. Supreme Court,

which she used to hire a bailiff to remove the Tenants from the rental unit.

The Landlord said: "I gave them a lot of chances before I took them to court."

The Landlord submitted a monetary order worksheet, as follows, setting out her monetary claims against the Tenants.

	Receipt/Estimate From	For	Amount
1	Landlord	Unpaid February rent	\$1,600.00
2	Cleaning Company	Cleaning costs	\$1,113.00
3	Bailiffs	Eviction	\$7,085.73
		Total monetary order claim	\$9,798.73

#1 UNPAID RENT FEBRUARY 2020 → \$1,600.00

The Landlord said that the Tenants paid her their rent by etransfer. She said:

After I receive rent, I give them a confirmation text that I received their rent. But this time I sent them a text saying, 'Could you please send me this month's rent?' If they don't respond, 'I haven't heard anything yet; please let me know when the outstanding rent is going to be paid.'

The Landlord said that the Tenants gave her excuses as to why they had not paid their rent in February; however, they never ended up paying her any rent that month.

#2 CLEANING COSTS → \$1,113.00

The Landlord submitted a detailed quote from a local cleaning company for the amount claimed here. She said she obtained quotes from other cleaners, but they were more expensive, so she used the least expensive quote she obtained.

The Landlord said that she had to pay for the bailiffs to get the Tenants out of the rental unit, herself, which was very expensive, as noted below. The Landlord said she could not afford to pay a cleaner to do this work, as well; therefore, she and her father did the cleaning themselves. The Landlord said it took them a week to get the full duplex clean, working about three hours a day. The Landlord referred me to photographs she took of

the rental unit after the Tenants were removed by the bailiff.

I reviewed many of the photographs and observed the following in them:

- The oven was extremely dirty throughout, including the inside window;
- The refrigerator had stains in it;
- The living room floor and carpets were very dirty, with garbage and other debris;
- Hallways were dirty with garbage left strewn about;
- Bags of garbage and boxes were left behind throughout the rental unit;
- The master bedroom carpet was filthy with dirt, plastic bottles, and other debris;
- Other bedrooms had dirty carpets, empty boxes and other cardboard and plastic left behind in the closets and elsewhere.

The Landlord said: "They didn't dump their garbage for weeks and it smelled really bad. I had to clean the carpet and hardwood floor, too."

In the Application, the Landlord also claimed \$200.00 that was not in her monetary order worksheet, saying: "damage from the pets was more than \$200.00."

The Landlord submitted photographs showing that walls and door frames were damaged by what looks to be excessive scratching at about a human's shin level. The photographs of the wall damage include scratches or marring of a narrow, but high section of the wall through to the plaster in one photo. Another shows a mark the size of two fists at the shin level of the wall that exposes the plaster. A third photograph shows the same type of damage to a different coloured wall in a different section of the house. There are two other photographs showing the same type of damage at the same height in the wall near a door.

The Landlord did not submit a receipt for having had the repairs for this damage estimated and/or repaired. I also note that at clause 4. the tenancy agreement states:

4. No animals are allowed to be kept in or about the Property without the revocable written permission of the Landlord.

There is no evidence before me of the Landlord having given the Tenants permission to have pets in the rental unit, or that the Tenants paid the Landlord a pet damage deposit.

#3 BAILIFF COSTS FOR EVICTION → \$7,085.73

In the hearing, the Landlord said that the Tenants did not leave the rental unit after she served them with the RTB order of possession. As such, the Landlord said she had to go to the British Columbia Supreme Court to get a Writ of Possession, so that she could hire a Sheriff or Bailiff to remove the Tenants from the rental unit. The Landlord submitted a copy of the Writ of Possession dated February 14, 2020.

The Landlord submitted a copy of a “Receipt for Peaceful Possession of Premises” (“Receipt”) for the rental unit for the Landlord. This Receipt states:

This will advise that the WRIT OF POSSESSION: which was registered on the 14 day of February, 2020, was executed in full on the 21 day of February, 2020, and below noted is the receipt given for peaceful possession of those premises.

The Receipt names the Landlord, the Tenants and the rental unit address, and it is signed by the Court Bailiff, B.J.

In an invoice dated March 17, 2020, the Court Bailiff set out the fees charged for executing the Writ of Possession and securing the rental unit for the Landlord. This process is billed at \$7,085.73. The Landlord submitted copies of receipts from the Bailiff demonstrating that she paid for the Bailiff’s services in three portions: \$3,500.00 on February 14, 2020, \$2,500.00 on February 21, 2020, and \$1,085.73, as evidenced in an undated interact transfer confirmation to the Bailiff for a total of \$7,085.73.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Landlord testified, I advised her of how I would analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenants violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the

violation;

3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

("Test")

#1 UNPAID RENT FEBRUARY 2020 → \$1,600.00

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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." There is no evidence before me that the Tenants had a right to deduct any portion of the rent from their monthly rent due to the Landlord.

Pursuant to sections 26 and 67 of the Act, and as there is no evidence to the contrary, I award the Landlord with **\$1,600.00** in recovering of the unpaid rent.

#2 CLEANING COSTS → \$1,113.00

From my observations of the Landlord's photographs of the condition of the rental unit, I find that the Tenants made little, if any effort to clean the rental unit before they were removed from it.

Landlords' and tenants' rights and obligations for repairs and cleaning are set out in sections 32 and 37 of the Act. Section 32 states:

Landlord and tenant obligations to repair and maintain

32 (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

Section 37 of the Act states:

Leaving the rental unit at the end of a tenancy

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.

Based on the evidence before me in this matter, I find that the Tenants breached their obligations under sections 32 and 37 to leave the rental unit clean and in good repair at the end of the tenancy.

The Landlord said that she and her father each worked for approximately three hours a day for seven days, which equals 42 hours of work to clean and repair the rental unit. Based on the cleaner's quote, this amounts to \$26.50 per hour, which I find to be a standard rate, if not on the lower side of hourly rates typically charged.

Given the photographs I saw of the condition of many of the rooms in the rental unit, I find it more likely than not that the entire duplex - with two washrooms, two kitchens and five bedrooms - was consistently dirty throughout. I, therefore, find that the amount charged by the Landlord for this matter is reasonable in the circumstances. Accordingly, I award the Landlord with recovery of **\$1,113.00** for this claim.

In the same category in her Application, the Landlord claimed an extra \$200.00 for repairs done to the wall and door frame damage noted in the photographs. However, I find that the Landlord provided insufficient evidence that she had this damage repaired. Regardless, I find it more likely than not that this damage occurred during this tenancy; therefore, I award the Landlord with a nominal amount for this claim, pursuant to Policy Guideline #16 and section 67 of the Act. I, therefore, award the Landlord with **\$50.00** for this claim.

#3 BAILIFF COSTS FOR EVICTION → \$7,085.73

Based on the evidence before me overall, I find that the Landlord has provided sufficient evidence that she was required to obtain a Writ of Possession from the Supreme Court of British Columbia, in order to hire a bailiff to remove the Tenants. I find that the Landlord hired this Bailiff and paid him the amount set out in this claim. Pursuant to section 67 of the Act, I award the Landlord with **\$7,085.73** from the Tenants in this matter.

Summary and Set Off

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security deposit of \$800.00 in partial satisfaction of the Landlord's monetary claim.

	Receipt/Estimate From	For	Amount Awarded
1	Landlord	Unpaid February rent	\$1,600.00
2	Cleaning Company	Cleaning costs	\$1,113.00
3	Nominal award	Wall and doorframe damage	\$50.00
4	Bailiffs	Eviction	\$7,085.73
		Total monetary order claim	\$9,848.73

Given the Landlord's success in her Application, I also award the Landlord with recovery of the \$100.00 Application filing fee pursuant to section 72 of the Act for a total monetary award of \$9,948.73 from the Tenants.

Pursuant to section 72 of the Act, I authorize the Landlord to retain the Tenants' \$800.00 security deposit in partial satisfaction of the award. I grant the Landlord a Monetary Order in the amount of **\$9,148.73** for the remainder of the award, pursuant to section 67 of the Act.

Conclusion

The Landlord is successful in her Application in the amount of \$9,848.73, in addition to recovery of the \$100.00 Application filing fee. The Landlord submitted sufficient evidence to meet her burden of proof on a balance of probabilities.

I grant the Landlord a Monetary Order in the amount of **\$9,148.73** from the Tenants, pursuant to section 67 of the Act.

This Order must be served on the Tenants by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: November 10, 2020

Residential Tenancy Branch