



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on July 28, 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 November 16, 2020 as a teleconference hearing. Only the Landlord attended the hearing at the appointed date and time. No one appeared for the Tenants. The conference call line remained open and was monitored for 13 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 Landlord and I were the only persons who had called into this teleconference.

The Landlord testified that he served the Tenants with the Application in person on August 1, 2020. The Landlord stated that he served the Tenants with his documentary evidence on October 31, 2020. Based on the oral and written submissions of the Applicant, and in accordance with sections 88 and 89 of the *Act*, I find that the Tenants are deemed to have been served with the above mentioned documents on the same date of service. The Tenants did not submit any documentary evidence in response to the Application.

The Landlord was provided with a full 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 and to which I was referred. 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 unpaid rent, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to a monetary order for damage compensation or loss, 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 Landlord testified that the tenancy began on May 1, 2018. Near the end of the tenancy, the Tenants were required to pay rent in the amount of \$1,500.00 to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$675.00 which the Landlord continues to hold. The Landlord stated that the Tenants moved out of the rental unit on July 18, 2020. The Landlord provided a copy of the tenancy agreement in support.

The Landlord stated that he had a previous hearing and was granted an Order of Possession which was served to the Tenants on March 30, 2020. The Landlord stated that he expected the Tenants to vacate the rental unit two days later as ordered, however, the Tenants remained in the rental unit until July 18, 2020 and did not pay any amount of rent to the Landlord during this time. The Landlord stated that he was unable to re-rent his rental unit until August 1, 2020.

As such, the Landlord is claiming rent for April, May June, and July 2020 in the amount of \$6,000.00. The Landlord stated that the Tenants' rent cheque for the month of October 2019 was returned NSF. The Landlord stated that at that time, the Tenants were only required to pay rent in the amount of \$1,450.00 to the Landlord. The Landlord provided a copy of the cheque that was returned by the bank. The Landlord is therefore claiming a further \$1,450.00 for unpaid October 2019 rent.

The Landlord is also claiming that the Tenants broke a window in the rental unit. The Landlord is claiming \$300.00 which was an estimate that the Landlord received. The Landlord stated that he decided to replace all the windows in the rental unit. The Landlord stated that he provided a copy of the estimate to the Residential Tenancy Branch. If successful, the Landlord is also seeking the return of the filing fee.

No one appeared for the Tenants to dispute the Landlords' claims.

Analysis

Based on the uncontested affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

The Landlord is claiming \$7,450.00 in relation to unpaid rent. 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.

In this case, I accept that the Landlord served the Tenants with an Order of Possession on March 30, 2020 and that the Tenants did not vacate the rental unit until July 18, 2020. I further accept that the Tenants failed to pay rent in the amount of \$1,500.00 each month to the Landlord during this time. I find that the Tenants were not entitled to withhold rent from the Landlord during April, May, June, and July 2020. I find that the Tenants failed to pay rent to the Landlord in the amount of \$1,450.00 for the month of October 2019. As such, I find that the Landlord is entitled to monetary compensation in the amount of **\$7,450.00** for unpaid rent.

The Landlord is claiming \$300.00 in relation to replacing a broken window that he states was broken by the Tenants during the tenancy. 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.

I find that the Landlord provided insufficient evidence to demonstrate the condition of the window at the start of the tenancy as opposed to the condition of the window at the end of the tenancy. In absence of a condition inspection report, I find it is difficult to find that the damage to the window was caused by the Tenants during the tenancy. Furthermore, while the Landlord stated that he provided the Residential Tenancy Branch with the copy of an estimate, no estimate was found in the Landlord's documentary evidence. I find that the Landlord has provided insufficient evidence to support the value of his loss. As such, I dismiss this portion of the Landlord's Application without leave to reapply.

Having been partially 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 \$675.00 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 \$6,875.00, which has been calculated below;

Claim	Amount
Unpaid rent:	\$7,450.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-(<i>\$675.00</i>)
TOTAL:	\$6,875.00

Conclusion

The Tenants breached Section 26 of the *Act*. The Landlord has established an entitlement to monetary compensation and has been provided with a monetary order in the amount of **\$6,875.00**. 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: November 16, 2020

Residential Tenancy Branch