



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 10:05 a.m. to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing, and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that the tenant was personally served with the Notice of Dispute Resolution Proceedings package on August 25, 2020. A signed, witnessed proof of service document was provided as evidence.

The landlord testified that she applied for and received an order for substitutional service by an adjudicator of the Residential Tenancy Branch on October 8th. In accordance with that order, the landlord served the tenant with additional evidence by email. This evidence consisted of the proof of service document previously referred to.

I note the tenant uploaded evidence to the Residential Tenancy Branch dispute management system. The landlord testified she was notified by this system that the tenant had uploaded evidence. Based on the uploading of the tenant's evidence, and the proof of service filed by the landlord, I am satisfied the tenant was served with the Notice of Dispute Resolution Proceedings package on August 25, 2020 in accordance with sections 89 and 90 of the Act.

This hearing was conducted in the absence of the tenant in accordance with Rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to a monetary order for cleaning and for serving the dispute resolution package?

Can the landlord recover the filing fee?

Can the landlord retain the security deposit?

Background and Evidence

A copy of the tenancy agreement was provided as evidence. The tenancy began on January 5, 2020. The tenancy was fixed, to expire on December 31, 2020. Rent was set at \$2,000.00 per month, payable on the first day of each month. A security deposit of \$1,000.00 was collected by the landlord which she continues to hold. A condition inspection report was also conducted at the commencement of the tenancy. The landlord testified there is a signed addendum to the tenancy agreement with a specific term #10 which reads '*the tenant agrees to pay a \$25 administration fee for every late rent payment. The fee is due on that month's rent payment.*'

The landlord testified the tenant paid full rent until the end of March until he lost his job. In April, the tenant asked the landlord to reduce his rent to \$1,500.00 per month which the landlord agreed to if the tenant successfully applied for a temporary rental supplement from the BC government. The landlord testified the tenant never applied for the supplement and the tenant eventually returned to work with reduced salary.

For the months of April, May, June and July, the tenant paid only \$1,500.00 rent. The landlord testified that the tenant never provided her with any information regarding the tenant's application for the temporary rent supplement, so the tenant is responsible for paying full rent for those months.

Some time prior to July 13th, the tenant served the landlord with a notice to end tenancy. Emails were exchanged between the parties and the following terms were agreed upon.

1. The tenant would move out on August 15, 2020. A final condition inspection was to be conducted that date at 12:00 p.m.
2. The tenant owes \$2,000.00 in unpaid rent, representing \$500.00 x 4 for the preceding 4 months.
3. The tenant will pay \$1,000.00 rent for August.

A copy of the email exchanges dated July 14th were provided as evidence whereby the tenant agrees to each of those terms. On August 3rd, the tenant emailed the landlord asking that the landlord *'keep the damage deposit at this time to cover any loss of rent.'*

The landlord testified the tenant didn't pay rent for August, leading to the landlord's claim for an additional \$25.00 administration fee.

The landlord testified the tenant didn't clean the rental unit after vacating the rental unit. Photos of the unit at the end of the tenancy were provided to corroborate this. The landlord testified she paid a cleaning company \$140.00 to clean the bathrooms, kitchen, dust, vacuum and mop the unit. The landlord provided an invoice from the cleaning company as evidence.

The landlord testified that she paid an agent \$100.00 to serve the tenant with the Notice of Dispute Resolution Proceedings when she commenced proceedings against him. This was done because the landlord is currently in the USA and could not serve the tenant herself. A copy of the e-transfer to this agent was provided as evidence. Although a process server eventually served the tenant with the notice, the landlord is not seeking recovery of the fee charged by the process server.

Analysis

Section 7 of the Act states: If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts

occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

- Claim for arrears in rent

The tenant did not attend this hearing to dispute any of the landlord's evidence. Based on the landlord's undisputed evidence, I find that the tenant was obligated to pay rent in the amount of \$2,000.00 per month to the landlord. The landlord provided the email from the tenant dated July 14th which states the tenant agrees he owes \$2,000.00 in arrears for the 4 months (April, May, June and July) where he paid only \$1,500.00 in rent. In the same email, the tenant agrees he must pay the landlord \$1,000.00 for August rent which the landlord has satisfied me remains unpaid. The tenant is in breach of section 26 and the tenancy agreement for his failure to pay full rent when it is due. I find the value of the landlord's loss is \$3000.00. The landlord is entitled to a monetary award for unpaid rent in the amount of \$3,000.00 pursuant to section 67 of the *Act*.

- Claim for late fee

I find the tenant agreed to the \$25.00 fee for late payment of rent when he signed the tenancy agreement addendum. I find the tenant failed to pay rent for the month of August, attracting the \$25.00 fee. The landlord is entitled to the \$25.00 late fee pursuant to section 7(d) of the Residential Tenancy Regulations and section 67 of the *Act*.

- Claim for cleaning

Section 37(2) of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

This notion is further elaborated in Residential Tenancy Branch Policy Guideline PG-1 which states:

the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. ***The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard.*** The tenant is also generally required to pay for repairs where damages are caused,

either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act (the Legislation). **(emphasis added)**

I have reviewed the photographs provided by the landlord to corroborate the claim for cleaning. While the photographs show a suite that was left in a state that may not be described as “move-in ready”, I find the unit was left reasonably clean and undamaged except for reasonable wear and tear. I decline to award the landlord a monetary award for cleaning.

- Claim for serving Notice of Dispute Resolution Proceedings

Section 72(1) of the Act provides that an Arbitrator may award one party recovery of the filing fee from the other party; however, the Act does not provide for recovery of other costs associated with making an Application for Dispute Resolution, gathering evidence, copying evidence or serving hearing documents. The tenant’s application seeking to recover the costs involved in pursuing this claim are dismissed without leave to reapply.

As the landlord’s application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

The landlord continues to hold the tenant’s security deposit in the amount of \$1,000.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the entire security deposit in partial satisfaction of the monetary claim.

Item	Amount
April arrears	\$500.00
May arrears	\$500.00
June arrears	\$500.00
July arrears	\$500.00
August pro-rated rent	\$1,000.00
Administration fee	\$25.00
Filing fee	\$100.00
Less security deposit	(\$1,000.00)
Total	\$2,125.00

Conclusion

I issue a monetary order in the landlord’s favour in the amount of **\$2,125.00**.

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 24, 2020

Residential Tenancy Branch