



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, CNR-MT
 OPR-DR, FFL, MNRL-S, MNDCL-S

Introduction

This hearing convened as a result of cross applications. In the Tenant's Application filed on October 14, 2020 the Tenant sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on October 5, 2020 (the 'Notice'), an order for more time to make such an application and an order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy. In the Landlord's Application filed on October 15, 2020 the Landlord sought an Order of Possession and monetary compensation based on the Notice, authority to retain the Tenant's security and pet damage deposit and recovery of the filing fee.

The hearing of the parties' cross applications was scheduled for teleconference at 9:30 a.m. on January 8, 2021. Only the Landlord and her legal counsel called into the hearing. The Landlord gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 10:27 a.m. Additionally, 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, her lawyer, and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord's legal counsel stated that they served the Tenant with the Notice of Hearing and the Application on October 21, 2020 by registered mail. A copy of the

registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of October 26, 2020 and I proceeded with the hearing in their absence.

Preliminary Matter—Issues to be Decided

The Landlord confirmed that the Tenant vacated the rental unit in mid December 2020 such that an Order of Possession was no longer required. **I therefore dismiss the Landlord's request for an Order of Possession without leave to reapply.**

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

Commencement of Hearing:

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the Tenant failed to call into the hearing, and vacated the rental unit, her Application was no longer applicable. **I therefore dismiss the Tenant's claim without leave to reapply.**

Issue to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?

2. Should the Landlord be permitted to retain the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that this tenancy began March 1, 2020. Monthly rent was \$2,100.00. The tenancy agreement provided that the Tenant was to pay a \$1,050.00 security deposit and a \$1,000.00 pet damage deposit. During the hearing the Landlord was unsure if those funds had been paid, but was willing to agree that they had been, for the purposes of any monetary order calculation.

The tenancy agreement included an addendum which provided that the Tenant was to be credited \$120.00 per month for yard maintenance. At the hearing before me the Landlord testified that the Tenant failed to perform these duties such that the full amount of rent was to be paid monthly.

The Landlord testified that the Tenant fell behind in their rent during the Covid-19 "specified period" of March 18 to August 17, 2020 at which time the parties entered into a repayment plan. The Landlord testified that the Tenant failed to pay the October rent and failed to pay according to the repayment plan. As a result, the Landlord issued the Notice. The Notice was served on the Tenant by posting to the rental unit door on October 5, 2020.

The Landlord confirmed the Tenant did not pay the outstanding amount although the Tenant did apply to dispute the Notice on October 14, 2020.

The Landlord received \$500.00 for the months July and August 2020 from the Provincial Government as a rental subsidy. The Landlord testified that as of the date of the hearing the following was outstanding for rent and utilities:

Month	Rent	Utilities	total
April 2020	\$500.00	\$100.00	\$600.00
May 2020	\$1,000.00	\$100.00	\$1,100.00
June 2020	\$2,100.00	\$100.00	\$2,200.00
July 2020	\$1,600.00	\$100.00	\$1,700.00
August 2020	\$1,600.00	\$100.00	\$1,700.00
September 2020	\$750.00	\$100.00	\$850.00

October 2020	\$2,100.00	\$100.00	\$2,200.00
November 2020	\$2,100.00	\$100.00	\$2,200.00
Rent December 1-11, 2020	\$745.00	\$35.00	\$780.00
TOTAL OWING	\$12,495.00	\$835.00	\$13,330.00

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides 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.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 26 of the *Act* provides that a Tenant must pay rent when rent is due. I accept the Landlord's evidence that the Tenant failed to pay rent in the amount of **\$12,495.00** and I award the Landlord recovery of this sum from the Tenant.

Section 46(6) of the *Act* deals with utilities and provides as follows:

(6)If

(a)a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b)the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

In the case before me there was no requirement in the tenancy agreement that the Tenant was obligated to pay a set amount of \$100.00 per month for utilities. The Landlord also failed to submit any invoices for the utilities to support the amounts claimed. As such, I find the Landlord has submitted insufficient evidence to support a finding that the Tenant was obligated to pay \$100.00 per month in utilities. As such, I dismiss her claim for the \$835.00 claimed for outstanding utilities.

As the Landlord has been successful in their Application, I award them recovery of the \$100.00 filing fee for a total of **\$12,595.00**.

Based on the tenancy agreement and the addendum, I find the Tenant paid a security deposit in the amount of \$1,050.00 and a pet damage deposit in the amount of \$1,000.00.

Pursuant to section 38 and 72 of the *Act* I authorize the Landlord to retain the Tenant's deposits in the amount of \$2,050.00 and I award the Landlord a Monetary Order for the balance due in the amount of **\$10,545.00**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Tenant vacated the rental unit and failed to attend the hearing; as such, her Application is dismissed without leave.

As the Tenant gave up possession of the rental unit, the Landlord's claim for an Order of Possession is dismissed without leave to reapply.

The Landlord is granted monetary compensation for unpaid rent and recovery of the filing fee. The Landlord may retain the Tenant's security and pet damage deposit towards the amounts awarded and is granted a Monetary Order in the amount of **\$10,545.00** for the balance due.

The Landlord's claim for compensation for unpaid utilities is dismissed without leave to reapply.

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: January 11, 2021

Residential Tenancy Branch