



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with the landlords' application for dispute resolution under the Residential Tenancy Act (Act) for:

- a monetary order for unpaid rent; and
- recovery of the filing fee.

The landlords and their agent attended the hearing; however, the tenants did not attend.

The landlord stated they served the tenants with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by personal service on September 27, 2020, at 3:40 p.m.

I accept the landlords' evidence that the tenants were served notice of this hearing in a manner complying with section 89 of the Act and the hearing proceeded in the tenants' absence.

The landlords and their agent were provided the opportunity to present their affirmed evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the submissions and/or arguments are reproduced here; further, only the evidence specifically relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the landlords entitled to receive monetary compensation from the tenants due to a breach of the Act, tenancy agreement, or Residential Tenancy Regulations and to recover the cost of the filing fee?

Background and Evidence

The landlords submitted a written tenancy agreement showing a tenancy start date of October 24, 2019, a fixed term through May 1, 2020, monthly rent of \$1,400, due on the 1st day of the month, and a security deposit of \$700 being paid by the tenants to the landlords. The written tenancy agreement shows the tenancy would end on May 1, 2020, as the tenants were required to vacate the rental unit, due to the landlords returning to live there.

The landlords' monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. BC hydro	\$818.18
2. Internet/tv	\$720.19
3. Rent owed to landlords	\$9,800.00
4. Legal fees	\$1,074.35
5. Bailiff fees	\$941.32
6. Keys and locks	\$175.42
7. Rent due to tenants not moving	\$3,600.00
8. Ozone machine rental due to tenants' smoking	\$153.30
9. Odour killer	\$67.99
10. Replacement mattress	\$447.99
11. Clean and paint	\$1,065.00
12. Filing fee	\$100.00
TOTAL	\$18,963.74

In support of their application, the agent testified to the following:

Unpaid utility charges –

The agent submitted that the tenants owed, but failed to pay the utilities, in particular the electric, internet, and television services. The landlords submitted copies of the billing statements. The claim is listed in the table above.

Rent; Bailiff fees –

The agent submitted that under the written tenancy agreement, the tenants owed, but did not pay the monthly rent of \$1,400 from January through July 2020. The agent submitted that the tenants were issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice), relating to the unpaid monthly rent for February 2020, and the landlords were issued an Order of Possession of the rental unit on March 27, 2020, effective two days after service on the tenants. Filed in evidence was the order of possession of the rental unit issued by another arbitrator and the Notice.

The agent submitted that the tenants were required to vacate the rental unit, but failed to do so.

The agent submits the tenants did not comply with the Order of Possession and the landlord had to obtain a Writ of Possession and have the order enforced by the Bailiff. The agent submits the landlords had to pay the amount of \$941.32 to the Bailiff to have the tenants removed from the property. Filed in evidence is a copy of the Bailiff's invoice and the Writ of Possession issued by the Supreme Court.

Legal fees –

The agent submitted that the landlords hired legal counsel to enforce the order of possession of the rental unit in the Supreme Court. The agent submitted that the legal costs were the direct costs of removing the tenants from the rental unit.

Keys and locks –

The agent submitted that the landlord had to change the lock and keys as the landlord thought the tenant, ML, could be violent.

Filed into evidence was an invoice for the lock and key change.

Rent due to tenants not moving –

The agent submitted that the tenants were required to vacate the rental unit by May 1, 2020, as per the written tenancy agreement, as the landlords were returning. Instead of vacating, the tenants remained until they were removed by the bailiff. As a result, the landlords were forced into renting temporary accommodations for three months, at \$1,200 per month. Filed into evidence was a copy of the receipt for the temporary stay.

Ozone machine rental due to tenants' smoking; odour killer; replacement mattress; clean and painting –

The agent submitted that these costs are directly attributable to the tenants' violation of the no-smoking clause. The agent submitted that the smoke smell was overwhelming and it was necessary to remediate the smell, which caused additional costs.

The agent submitted that there were cigarette burns in the mattress in the furnished rental unit and as a result, it had to be replaced.

The agent submitted that the walls, ceilings, windows, floors, cabinets, appliances, sofas, and furniture all had to be cleaned and repainted, causing a further loss to the landlords.

Filed into evidence were the receipts for these claimed costs and photographs.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Despite being duly served with the landlords' Application for Dispute Resolution, evidence, and Notice of Hearing (application package), the tenants failed to attend the hearing. The landlords' evidence is therefore uncontested.

Unpaid utility charges –

I find the landlords submitted sufficient evidence that the utilities were not provided for in the written tenancy agreement and that the tenants were responsible for the utilities. The undisputed evidence is that the tenants failed to pay the utilities and as a result, I find the landlords have established a monetary claim of unpaid utilities of \$818.18 for the electricity and \$720.19 for the internet/television, for a total of **\$1,538.37**.

Unpaid Rent –

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, the Regulations or the tenancy agreement and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

In this case, I find the tenants were obligated to pay the monthly rent of \$1,400 per month, for the months of January through July, 2020. I note that the monthly rent for the months of May through July were owed due to the tenants overholding in the rental unit beyond the required vacate date of May 1, 2020.

I therefore find the landlords have established a monetary claim of **\$9,800**.

Legal fees –

I find that the landlords have chosen to incur costs that cannot be assumed by the tenants. I do not find the tenants to be responsible for the landlords choosing to retain legal counsel to pursue the enforcement of the order of possession of the rental unit in the Supreme Court. The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of Act and not for costs incurred due to the landlords' choice. Therefore, I find that the landlords may not claim for legal fees, as they are costs which are not named by the Act.

Bailiff fees –

In this case, the landlords received an order of possession on March 27, 2020. The tenants were required to give vacant possession of the said property within 2 days to

the landlord. The tenants failed to comply with the Order of Possession and the landlord had no alternative but to have the tenants removed by the bailiff. I find the tenants breached the Act, when they failed to comply with section 55 of the Act, and this caused losses to the landlords. I find the landlord is entitled to recover the cost of the bailiff fees in the amount of **\$941.32**.

Keys and locks –

I find the landlords submitted sufficient evidence to show that the tenants failed to return the keys and the landlords were entitled to costs to replace the lock and keys.

I therefore find the landlords have established a monetary claim of \$175.42, as reflected in the documentary evidence.

Rent due to tenants not moving –

The written tenancy agreement required the tenants to vacate the rental unit by May 1, 2020, and they failed to do so. The rental unit was the landlords' home for their use upon their return and as the tenants failed to vacate, I find the tenants breached the written tenancy agreement and this caused losses to the landlords. I find the landlords' claim to be reasonable and find they have established a monetary claim of \$3,600, or \$1,200 per month for May, June and July, 2020.

Ozone machine rental due to tenants' smoking; odour killer; replacement mattress; clean and painting –

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

In this case, I find the landlords submitted sufficient and uncontested evidence to support that the rental unit was not left reasonably clean and that the damage from the cigarette smoking as claimed was beyond reasonable wear and tear.

I have reviewed the landlord's photographic evidence along with the receipts and invoices for the amounts claimed. Upon review of this evidence, I find the costs claimed to be reasonable. I therefore find the landlords have established a monetary claim of **\$1,734.24**, comprised of \$153.30 for a rental ozone machine, an odour killer of \$67.99, cleaning and painting for \$1,065, and a replacement mattress for \$447.99.

I grant the landlord recovery of their filing fee of \$100.

Due to the above, I find the landlords have established a total monetary claim as described on the table contained on page 2 of this Decision, **with the exclusion of the legal fees**, or a total amount of **\$17,889.39**, which includes the filing fee of \$100.

I grant the landlords a final, legally binding monetary order pursuant to section 67 of the Act for the amount of **\$17,889.39**.

Should the tenants fail to pay the landlord this amount without delay, the order must be served to the tenants for enforcement. Thereafter, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are **cautioned** that costs of such enforcement are subject to recovery from the tenants.

Conclusion

The landlords' application for monetary compensation is granted and they have been awarded a monetary order for the amount of **\$17,889.39**.

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 20, 2021

Residential Tenancy Branch