



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

CORRECTED DECISION

Dispute Codes MNR-S, MNDC-S, FF

Introduction, Preliminary and Procedural Matters-

This matter convened by teleconference on November 13, 2020 to deal with the landlord's application for dispute resolution for:

- a monetary order for unpaid rent;
- compensation for a monetary loss or other money owed;
- authority to keep the tenants' security deposit to use against a monetary award; and
- to recover the cost of the filing fee.

The landlord, the tenants and their interpreter/assistant attended both the original and reconvened hearings.

That Interim Decision is incorporated by reference herein and should be read in conjunction with this final Decision.

The original hearing proceeded on the landlord's application and the landlord provided testimony in support. By the end of the 75 minute hearing, the landlord had concluded his testimony.

The parties were informed by the Interim Decision and at the hearing, that the reconvened hearing would be held to provide the tenants the opportunity to present their response to the landlord's application.

At both hearings, all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, 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 parties' respective submissions and or arguments are reproduced here; further, only the **evidence specifically referenced by the parties and relevant to the issues and findings** in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenants and to recover the cost of the filing fee paid for this application?

Background and Evidence

The evidence shows that the tenants are the former owners of the residential property and in August 2015, the home was sold to the landlord here.

The tenants stayed in the residential property, after it was sold, and a tenancy formed between the landlord here and the former owners, the tenants here.

The evidence shows that the latest tenancy agreement was executed between the parties on January 21, 2020, for a fixed term through August 20, 2020, for a monthly rent of \$1,530, and a security deposit of \$750 being paid by the tenants to the landlord.

The evidence showed that the tenants rented the upper portion of the house and the landlord rented the other suites to other tenants during this tenancy.

The evidence showed that the tenants vacated the rental unit on or about August 6, 2020, and an inspection of the premises was conducted on August 9, 2020.

The landlord's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. July 21-August 20, 2020 rent	\$930.00
2. August 21 – September 20, 2020 rent	\$1,530.00
3. August 21-September 2017 rent owed	\$50.00
4. April 21- May 20, 2018 rent owed	\$20.00
5. Cleaning fee	\$500.00
6. Unpaid utility charges	\$214.30

7. Estimated garbage removal	\$500.00
8. Registered mail costs	\$25.45
9. Registered mail costs	\$29.41
10. Filing fee	\$100.00
TOTAL	\$3,899.16

In support of his application, the landlord provided the following evidence:

July 21-August 20, 2020 rent –

The landlord submitted that he sent an email to the tenants on June 20, 2020, asking they end the tenancy on August 20, 2020, which the tenants rejected as they were not ready to move out.

The landlord said he required two months notice from the tenants as he had to give his own landlord a two month notice, in his cooperative housing. Then on July 21, 2020, the tenants suddenly let him know they were moving out on August 6, 2020.

The landlord submitted the tenants did not pay the monthly rent owed for the period of July 21 to August 20, 2020, prior to vacating on August 6, 2020. The normal monthly rent of \$1,530 is reduced to \$930, as the landlord received a government rent subsidy payment of \$600.

August 21 – September 20, 2020 rent –

The landlord submitted that the tenants provided insufficient notice of their intention to vacate. The rental period is from the 21st of the month to the 20th of the next month. The tenants provided their notice on July 21, 2020, and should have sent the notification no later than July 20, 2020. Due to the insufficient notice, the landlord claims lost rent revenue for this time period, in the amount of \$1,530.

The landlord submitted that he moved into the rental unit on October 1, 2020.

August 21-September 2017 and April 21- May 20, 2018 rent owed –

The landlord submitted that he is owed \$50 as the tenants deducted this amount from the monthly rent that month. The tenants informed the landlord they had to park on the street when another tenant blocked the driveway. The tenants received a parking ticket

in the amount of \$50 and deducted this amount because the landlord should be responsible for the other tenant, according to the landlord.

According to the landlord, the same thing happened again when another tenant blocked the driveway, resulting in the tenants receiving a ticket when parking on the street. The tenants deducted \$20 from that month's rent.

The landlord denied he was responsible for the actions of the other tenants in the residential property.

Cleaning fee –

The landlord supported this claim by submitting that when he purchased the home from the tenants in 2015, the contract for sale obligated the sellers (tenants) to deliver the home in a "clean and tidy condition".

The landlord submitted that at the end of the tenancy, the home was not clean or tidy and required cleaning. According to the landlord, the parties had a move-out inspection, which showed the tenants did not clean the house prior to leaving. The landlord said that the tenants asked the landlord to find someone to clean the house.

The landlord confirmed there was not a move-in condition inspection report (CIR). The landlord submitted a partially completed, move-out CIR.

Unpaid utility charges – The tenants agreed to pay this amount.

Estimated garbage removal –

The landlord submitted that he is entitled to garbage removal costs because the tenant is a landscaper, whose tools were in the backyard when the home was purchased and still there after the tenants vacated.

Registered mail costs –

The landlord submitted that he tried to come to an agreement with the tenants prior to filing his application, but those efforts were unsuccessful. The landlord submitted that the tenants' refusal to settle caused him to incur the mailing costs involved in an application for dispute resolution.

The landlord submitted a considerable amount of evidence, which included numerous photographs, written statements, social media conversations between the parties, and a cleaning receipt.

In response to the landlord's application, the tenants, through their interpreter/legal assistant, provided the following response:

July 21-August 20, 2020 rent –

The tenants submitted the landlord violated the Emergency Program Act and illegally tried to evict them during the state of emergency. This resulted in them having to find a new home during the pandemic, at a great cost.

The tenants submitted that they are entitled to compensation allowed under the Act for having received a two month notice to end the tenancy for landlord's use of the property on June 20, 2020 and that is why they held back the final month's rent.

August 21 – September 20, 2020 rent –

The tenants submitted that they are not responsible for the rent from August 21 to September 20, 2020, as they were required to move out on August 6, 2020, due to the two month notice from the landlord.

August 21-September 2017 and April 21- May 20, 2018 rent owed –

The tenants submitted that the landlord rented the whole house, three units, and there were three families living there. Two or three years ago, one of the other tenants continued to block the driveway, preventing the tenant from parking on the property.

The tenants submitted that they had to park on the street and received parking tickets. The tenants submitted that it was the landlord's responsibility to reimburse them the parking fees, because he would not caution the other tenants against blocking the driveway.

Cleaning fee –

The tenants questioned whether the landlord's receipt for cleaning was legitimate, as there was no cleaning company name, address, telephone number or formal signature. Additionally, there was no detailed description of the work done or hours spent.

Registered mail costs –

The tenants denied being responsible for the landlord's application fee and registered mail costs.

Estimated garbage removal –

The tenants disputed this claim, saying that as an owner of five years, the landlord never removed the garbage from the yard and never mowed or cleaned the lawn. The tenants submitted that it was impossible for the landlord to know whose garbage was in the back yard, as three families lived there.

The tenants' relevant evidence included written statements.

Analysis

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

Test for damages or loss

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 in sections 7 and 67 of the Act. Accordingly, an applicant must prove each of 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 whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. 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 whatever was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

July 21-August 20, 2020 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.

Although the tenants claimed they were entitled to withhold the final month's rent because of the landlord's two month notice to them to vacate the rental unit, this notice came by way of an email. A landlord may only end a tenancy for landlord's use of the property by serving the tenants a Two Month Notice to End Tenancy for Landlord's Use of Property, on the proper form. The proper form commonly used is a Residential Tenancy Branch (RTB) form.

While the landlord is not absolutely required to use the RTB form, the landlord is required to serve a notice which complies with section 52 as to form and content of the notice to end the tenancy. I find the tenants received an email telling them to vacate the rental unit; however, this email did not comply with the form and content of a notice to end the tenancy, as it did not contain the required information.

In this case, the tenants were not required to vacate, as they did not receive the proper Two Month Notice, and therefore, they were not entitled to the equivalent of one month's rent payable under the tenancy agreement.

As it was the tenants' choice to vacate, they were obligated to pay the monthly rent due under the tenancy agreement.

I therefore **grant** the landlord's monetary claim for unpaid monthly rent for July 21-August 20, 2020 rent in the amount of **\$930**.

August 21 – September 20, 2020 rent –

When the tenants provided their notice to the landlord on July 21, 2020, and vacated on August 6, 2020, the landlord was required under the Act to begin the process of

minimizing his loss. In the case of a tenant's insufficient notice, and a landlord claims a resulting loss of rent revenue, a landlord typically begins advertising for new tenants in order to minimize their loss, even if it is just for one month.

In this case, the landlord provided insufficient evidence that he took any steps to minimize his loss, as required under the Act, as he intended to move into the rental unit.

I therefore **dismiss** his claim for unpaid monthly rent August 21 – September 20, 2020.

August 21-September 2017 and April 21- May 20, 2018 rent owed –

While the tenants were obligated to pay the full monthly rent for these two months, I find the landlord failed to bring forth his claim in a timely manner. Rather, he sat on these claims for over 2-3 years.

Due to this delay, I find the legal doctrine of "waiver" applies here, as I find the landlord's clear intention was to forgo the exercise of his contractual right under the tenancy agreement.

I **dismiss** the landlord's claim for \$50 and \$20 respectively.

Cleaning fee –

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

Under sections 23(3) and 35(3) of the Act, a landlord **must** complete a condition inspection report in accordance with the Residential Tenancy Regulations and both parties must sign the report.

I have reviewed the landlord's considerable photographic evidence. While the rental unit may not have been move-in ready for the next tenant, I cannot find that the tenants did not leave the rental unit reasonably clean.

While there are too many photographs on which to provide a specific comment, some of the photographs appeared to me to show reasonable wear and tear from long term use. The rental unit was not new at the start of the tenancy, and it appeared to me that the photographs just showed the appearance of age.

Many, if not most, of the photographs were taken at close range. I note that the landlord failed to provide the up-close photos of the same locations at the beginning of the tenancy as at the end, and I therefore could not assess whether the tenant was responsible for any cleaning.

I also considered that the landlord failed to comply with section 23(3) of the Act, which requires that the landlord and tenant must inspect the rental unit together at the beginning of the tenancy, and in this case, the landlord failed to conduct the inspection or prepare a report. Additionally, I found that the CIR submitted by the landlord was not completed and was undated.

On the basis of the lack of a joint inspection of the rental unit at the beginning of the tenancy, with the tenants not having the opportunity to comment on the condition of the rental unit, I was not able to rely on the incomplete move-out condition inspection report.

I also looked to the landlord's receipt evidence, and find it was generic, not detailed as to the amount of time spent or what areas were cleaned in the rental unit. I would expect a receipt to explain the amount of cleaning, the areas, and time spent in cleaning to be sufficient evidence.

For all the above reasons, I therefore find the landlord submitted insufficient evidence to support his claim for additional cleaning and it is **dismissed**.

Unpaid utility charges –

The tenants agreed to pay this amount. I therefore **grant** the landlord's monetary claim of **\$214.30**.

Estimated garbage removal –

The landlord submitted that he is entitled to garbage removal costs because the tenant is a landscaper, whose tools were in the backyard when the home was purchased and still there after the tenants vacated.

Tenancy Policy Guideline 1 specifies only that a tenant in a single family dwelling or in a multi-family dwelling who has exclusive use of the yard is responsible for maintenance. Otherwise yard maintenance is the responsibility of the landlord.

In this case, the evidence showed the yard was shared by three families. I therefore find the landlord submitted insufficient evidence to show which of the three sets of tenants might be responsible for garbage removal or even if the landlord has incurred a cost for garbage removal.

I **dismiss** the landlord's estimated claim for \$500.

Registered mail costs –

As to the landlord's claim for registered mail expenses, the Act does not provide for the reimbursement of expenses related to disputes arising from tenancies other than the filing fee. I **dismiss** the landlord's claim for registered mail expenses.

Filing fee –

As the landlord's claim was partially successful, I **grant** the landlord recovery of his filing fee in the amount of **\$100**, pursuant to section 72 of the Act.

Based on the above, I find the landlord has established a total monetary claim of **\$1244.30**, comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
July 21-August 20, 2020 rent	\$930.00
Unpaid utility charges	\$214.30
Filing fee	\$100.00
TOTAL	\$1,244.30

Pursuant to sections 38 and 67, I grant the landlord authorization to retain the tenants' security deposit of \$750 in partial satisfaction of the landlord's monetary claim.

Pursuant to section 67 of the Act, I grant the landlord a monetary order for the balance owing by the tenants to the landlord in the amount of ~~\$493.30~~ **\$494.30**

Should the tenants fail to pay the landlord this amount voluntarily without delay, the monetary order must be served on the tenants to be enforceable. 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 recoverable from the tenant.

Conclusion

The landlord's application for monetary compensation has been partially successful as he is granted a monetary claim of \$1,244.30. The landlord is authorized to retain the tenants' security deposit of \$750 and he has been awarded a monetary order for the balance due in the amount of ~~\$493.30~~. **\$494.30.**

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: February 12, 2021

Dated: February 24, 2021 (Correction)

Residential Tenancy Branch