



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Century 21 Energy Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNRL-S, MNDL-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 to the rental unit and authorization to retain a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fees from the tenant pursuant to section 72.

The tenant did not attend this hearing although I left the teleconference hearing connection open throughout the hearing that commenced at 1:30 p.m. and ended at 2:00 p.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, represented by property manager EV ("landlord"). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that she served the tenant with the Notice of Dispute Resolution Proceedings package by registered mail on December 14, 2020. The landlord testified that Canada Post confirmed the mailing was received by the tenant on December 18, 2020 and the tracking number for the mailing is recorded on the cover page of this decision. The landlord testified that the package was sent to the tenant at the forwarding address which was given to the landlord by text message on November 27, 2020 at 1:44 p.m, and the text was read aloud to me during the hearing. I deem the tenant served with the Notice of Dispute Resolution Proceedings package on December 19, 2020, five days after it was sent by registered mail in accordance with sections 89 and 90 of the *Act*. This hearing proceeded in the absence of the tenant.

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 damages to the rental unit?

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. This tenancy began on December 1, 2018 with rent set at \$950.00 payable on the first day of each month. A security deposit of \$475.00 was collected by the landlord which the landlord continues to hold.

The landlord gave the following testimony. The rental unit is a self-contained manufactured home located in a manufactured home park. The age of the manufactured home is unknown however the landlord describes it as “older”. The landlord does not know if any renovations have ever been done to the unit, however the landlord believes it has been updated over the years.

The tenancy began with a different property management company from the one who attended today’s hearing. At the commencement of the tenancy, the previous management company did a condition inspection report with the tenant, supplied as evidence in this hearing.

The landlord testified that the tenant was served with multiple notices to end tenancy and the tenant finally agreed to vacate the rental unit the weekend of November 21-22. The following day, a colleague of the landlord went to the rental unit to check on the progress of the tenant and found the tenant had left some possessions behind. She communicated with the tenant who advised the landlord that whatever was left behind would be suitable for donating to charity and everything else was trash.

The landlord testified that they tried to arrange a date for a move-out condition inspection report, however the parties could not find a suitably convenient date. The landlord who attended the hearing testified that she is unaware of whether her colleague offered the tenant a written final opportunity for inspection but testified that the colleague and the tenant spoke on November 24th, the same day the colleague did a move-out condition inspection report by herself. That day, the colleague sent texts with the tenant (not provided as evidence for this hearing) and the tenant didn’t agree with her assessment, responding that he had photos of the condition of the rental unit

when he first moved in. A copy of the condition inspection report done without the tenant present was provided as evidence.

When the tenant moved out, he was in arrears of rent for several months. The landlord testified that the tenant was served with a formal repayment plan for the affected rent (between March 18, 2020 and August 17, 2020) however the tenant did not make any additional payments toward arrears. The landlord provided a spreadsheet to show that, with the exception of two payments of \$600.00 on June 25th and \$950.00 on September 15th, rent was not paid between May 1, 2020 and November 30, 2020. The landlord seeks compensation in the amount of \$5,100.00 for unpaid rent.

The landlord also seeks compensation for damages to the rental unit in the amount of \$2,443.50.

The first item is for a thermostat that was removed from the unit and was missing. The landlord paid a contractor a total of \$124.35 to inspect, locate wiring and replace the missing thermostat.

The remainder of the landlord's application is for a variety of items shown on a quotation provided by the same contractor. The landlord testified that the contractor charges \$45.00 per hour for his work and the quote includes labour in each line. The landlord acknowledges that the move-in condition inspection report done with the previous property management company indicates various deficiencies with the unit and the landlord attending this hearing does not know whether some of the items noted in the contractor's quote was to repair pre-existing damage.

The landlord also testified that it was her colleague who completed the move-out condition inspection report presented as evidence in this hearing; that property manager could not attend this hearing because she was involved in another dispute resolution hearing being heard at the same time as this one. The landlord testified that she is unsure about whether her colleague ever formally invited the tenant to attend for an inspection at the end of the tenancy, but that they spoke a few days after the colleague did it alone. The property manager attending for this hearing relies on the photos provided in the move-out condition inspection report to give testimony regarding damage to the unit.

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.

- Landlord's claim for unpaid rent

The tenant did not attend this hearing to dispute any of the landlord's evidence or testimony. Based on the landlord's undisputed testimony, I am satisfied the tenant was obligated to pay rent in the amount of \$950.00 per month and failed to pay rent between May 1, 2020 and November 30, 2020 (with the exception of two payments of \$600.00 and \$950.00).

Section 26 of the *Act* states:

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.

I find the tenant did not have any right to deduct any portion of the rent and that the landlord is entitled to arrears in rent in the amount of **\$5,100.00** pursuant to section 67 of the *Act*.

- Landlord's claim for damages to the rental unit

Residential Tenancy Branch Policy Guideline PG-1 [Landlord & Tenant – Responsibility for Residential Premises] 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.

The landlord has provided undisputed testimony and photographs to prove the tenant left garbage behind at the end of the tenancy. I find that the amount of debris and garbage left behind at the end of the tenancy exceeds "reasonable health, cleanliness and sanitary standards" and that the landlord was required to hire cleaners to remove the garbage. The landlord provided a quote of \$480.00 from her contractor to "remove all garbage and deep clean unit". The landlord testified that the contractor charges \$45.00 per hour for this work, which I find to be excessive when the average rate for a housecleaner in British Columbia is less than \$20.00 per hour. I award the landlord 10 hours at \$20.00 per hour for removing the tenant's garbage and cleaning, a total of **\$200.00** pursuant to section 67 of the *Act*.

The landlord has also provided sufficient evidence to satisfy me that the tenant removed the thermostat from the wall which had to be repurchased and replaced. The landlord provided a contractor's invoice in the amount of \$124.25 for this work and materials and I find this amount to be reasonable. I award the landlord **\$124.25** pursuant to section 67 of the *Act*.

Sections 23 and 35 of the *Act* require the landlord and tenant to participate in move-in and move-out condition inspections and document them in written reports. The landlord is responsible for scheduling the inspections. If a date for the inspection cannot be agreed upon by the parties, the landlord is obligated to serve the tenant with a notice of final opportunity for inspection pursuant to section 17(2) of the Regulations. The landlord was unable to confirm whether her colleague complied with section 17 of the Regulations.

Section 21 of the *Act* states that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this case, the landlord acknowledged that the rental unit, is an “older” manufactured home, and she doesn’t know it’s exact age. Although the landlord testified there have been updates done to the rental unit, no documentary evidence such as photographs were supplied to verify what the manufactured home looked like at the commencement of the tenancy.

The landlord further acknowledges that the previous property management company noted many deficiencies in the rental unit in the move-in condition inspection report. I have reviewed the move-in condition inspection report and note that multiple rooms are described as “dirty, not clean, broken, or stained”. There are repairs to be completed at the start of the tenancy such as blinds and side door and the landlord was unable to verify whether these repairs were completed at the start of the tenancy or left unrepaired.

Based on the condition inspection report done at the commencement of the tenancy, I determine the state of repair and decoration of the rental unit was fair to poor. The condition inspection report done at the end of the tenancy may or may not reflect pre-existing issues with the rental unit and nobody present at the original inspection was able to provide testimony to verify the same. Second, I find the landlord’s failure to make the arrangements for the tenant to attend the rental unit on a specific date for a condition inspection report as required by section 17 of the Regulations also prevented the tenant from having the opportunity to defend the landlord’s alleged damage claims. On a balance of probabilities, I find the landlord has not provided sufficient evidence to satisfy me that the remainder of the damage on the contractor’s quote should attributed to the tenant. I dismiss the remainder of the landlord’s application for damages to the rental unit.

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

The landlord applied to retain the tenant’s security deposit in satisfaction of the monetary claim. In accordance with the offsetting provisions of section 72 of the *Act*, the landlord is to retain the tenant’s full security deposit in partial satisfaction of the monetary order.

Item	Amount
Arrears in rent	\$5,100.00
Cleaning	\$200.00
Thermostat	\$124.25
Filing fee	\$100.00
Less security deposit	(\$475.00)
Total	\$5,029.25

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$5,029.25**. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: March 30, 2021

Residential Tenancy Branch