



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S MNRL-S FFL

Introduction

The landlord seeks compensation against their former tenant pursuant to sections 67 and 72 of the *Residential Tenancy Act* ("Act"). A hearing was held on March 15, 2021 at 1:30 PM and only the landlord attended. The hearing ended at 1:42 PM.

I am satisfied based on evidence provided by the landlord, including that the Notice of Dispute Resolution Proceeding was served on the tenant, by both email and registered mail, that the tenant was served in compliance with Act and the Rules of Procedure.

Issue

Is the landlord entitled to compensation?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began on August 1, 2019 and ended on October 13, 2020. Monthly rent was \$3,500.00, and this was due on the first of the month. The tenant paid a security deposit of \$1,750.00, which the landlord currently holds in trust pending the outcome of this application.

On September 23, 2020, after applying (by way of a direct request application) for an order of possession and a monetary for unpaid rent, the landlord obtained an order of possession from the Residential Tenancy Branch. A copy of this order of possession was submitted into evidence.

On October 7, 2020, on application by the landlord, the Supreme Court of British Columbia issued a writ of possession. The writ of possession was executed by a court bailiff on October 13, 2020. A copy of the bailiff's letter summarizing this information was submitted into evidence.

The landlord paid \$120.00 for the supreme court application fee (to obtain the writ of possession) and they paid \$3072.33 for the bailiff fees. Copies of a court registrar receipt along with e-transfer payment confirmations to the bailiff, a trust ledger from the bailiff showing various costs and disbursements, were in evidence.

In addition to the above-noted fees, the landlord seeks compensation for unpaid rent for June, July, August, and for thirteen days in October 2020. (It should be noted that the landlord previously obtained a monetary order for unpaid rent for September 2020, hence the reason it is not included in this present application.)

The tenant also owes the landlord \$883.28 for unpaid electric bills and \$744.87 for unpaid gas bills; copies of the electric and the gas bills were submitted into evidence. Finally, I note that the landlord seeks to recover the cost of the application filing fee.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, section 26 of the Act requires that a tenant must pay rent, including any utilities that are required to be paid under the agreement, when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

The landlord gave evidence, which I accept, that the tenant did not pay rent for June through October 13, 2020 and they did not pay the electric and gas bills. The tenancy ended on October 13 when the landlord took possession, and I calculate a per diem rate of \$115.07 for rent for each of the days in October that the tenant had possession. Therefore, arrears in the amount of \$1,495.91 are owing in respect of October's rent.

In respect of the court filing fee and bailiff costs, these were monetary losses incurred by the landlord in order to take possession of the rental unit and thus exercise their legal rights as a landlord under the Act.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for compensation related to the taking possession of the property by way of a writ of possession and the hiring of a bailiff.

As the landlord was successful in their application, I award \$100.00 for the cost of the application filing fee, pursuant to section 72 of the Act.

In total, I award the landlord \$16,916.39 in compensation, for the following items:

1. Unpaid rent for June, July and August 2021	\$10,500.00
2. Unpaid rent for October 2021 (13 days)	1,495.91
3. Unpaid electric bills	883.28
4. Unpaid gas bills	744.87
5. Supreme Court application fee	120.00
6. Bailiff service cost	3,072.33
7. Residential Tenancy Branch filing fee	100.00

Section 38(4)(b) of the Act permits a landlord to retain a security deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I order and authorize the landlord to retain the tenant’s security deposit of \$1,750.00 in partial satisfaction of the above-noted award.

The balance of the award is granted by way of a monetary order in the amount of \$15,166.39. This monetary order is issued to the landlord, in conjunction with this decision. As explained to the landlord, they may serve the monetary order on the tenant by way of email, which is an acceptable form of service under the Act.

Conclusion

I grant the landlord a monetary order in the amount of \$15,166.39, which must be served on the tenant. If the tenant fails to pay the landlord, the amount owed, within 15 days of receiving the order then the landlord may file and enforce the order in the Provincial Court of British Columbia (Small Claims Court).

I authorize, and order, the landlord to retain the tenant's security deposit of \$1,750.00.

This decision is final and binding, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: March 15, 2021

Residential Tenancy Branch