



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREATER VICTORIA HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL, MNDL, MNDCL, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act"), for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 24 minutes. The landlord's two agents, landlord TA ("landlord") and "landlord RM" attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed that she was the accounts receivables manager and landlord RM confirmed that he was the property manager, both employed by the landlord company named in this application. Both landlord agents confirmed that they had permission to represent the landlord company at this hearing.

The landlord stated that the tenant was served with the landlord's application for dispute resolution hearing package on January 22, 2021, by way of registered mail to the rental unit where the tenant was still residing until March 31, 2021. The landlord provided a Canada Post receipt and confirmed the tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on January 27, 2021, five days after its registered mailing.

Preliminary Issue – Dismissal of Portions of the Landlord's Application

At the outset of the hearing, the landlord confirmed that the tenant vacated the rental unit and the landlord no longer required an order of possession. Accordingly, I informed the landlord that this portion of the landlord's application was dismissed without leave to reapply.

During the hearing, the landlord confirmed that since an amendment to this application was not made, the landlord was not seeking now or in the future, \$56.00 total for unpaid rent (\$28.00 per month for February and March 2021), since the tenant was short on Ministry rent payments. I informed the landlord that this portion of the landlord's application was dismissed without leave to reapply.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent, for damage to the rental unit and for compensation for damage or loss under the *Act, Residential Tenancy Regulation* or tenancy agreement?

Is the landlord entitled to recover the filing fee paid for this application?

Background and Evidence

The landlord testified regarding the following facts. This tenancy began on April 1, 2011 and ended on March 31, 2021. Monthly rent in the amount of \$394.00 was payable on the first day of each month. A security deposit of \$295.50 was paid and the landlord continues to retain \$195.50 from the deposit. The landlord was ordered to retain \$100.00 from the tenant's security deposit by way of a previous RTB hearing decision, dated March 1, 2021, issued by a different Arbitrator. A written tenancy agreement was signed by both parties.

The landlord seeks a monetary order of \$715.70 plus the \$100.00 application filing fee.

The landlord stated the following facts. The landlord seeks rental arrears of \$436.00 total from January 2016 to 2021, that the tenant failed to pay to the landlord. The landlord seeks \$154.70 to clean a couch that the tenant urinated on in the common area of the rental building. The landlord provided photographs of the tenant sleeping on the couch. The landlord provided an invoice for the cost but not a receipt, claiming that it was probably paid by the landlord by cheque sometime in July 2019. This cost would

show on the landlord's bank statements, but a copy was not provided for this hearing. The landlord seeks \$125.00 for having to replace the tenant's lost keys twice, for which the tenant signed agreements to pay each time and the landlord provided copies of same. The landlord provided an invoice for same from the landlord's internal inventory that replaced the building, unit and mailbox keys at a cost of \$70.00 for the first time and building and unit keys at \$55.00 for the second time. The landlord claimed that the tenant failed to pay these costs back to the landlord.

Analysis

As per section 26 of the *Act*, the tenant is required to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$436.00 from January 2016 to 2021 to the landlord. Therefore, I find that the landlord is entitled to \$436.00 total in unpaid rent from the tenant.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of the landlord.

I dismiss the landlord's claim for \$154.70 to clean the couch in the common area. The landlord only provided an invoice with a balance due, for this cost. I find that the landlord failed to provide a receipt, bank statement or other documentary evidence to show if, how and when that invoice was paid by the landlord.

I award the landlord \$125.00 to replace the tenant's keys twice. The landlord provided two invoices as well as agreements signed by the tenant that he would pay for replacement keys twice. As these invoices were issued by the landlord's internal inventory service, I accept the landlord's testimony that these costs were paid internally by the landlord but no receipts could be issued since the tenant failed to pay these amounts to the landlord.

The landlord continues to hold the remainder of \$195.50 from the tenant's security deposit, as a different Arbitrator ordered the landlord to retain \$100.00 from the deposit at a previous RTB hearing. The file number for that hearing appears on the front page of this decision.

The landlord did not apply to retain the remainder of the tenant's security deposit. However, in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the remaining \$195.50 from the tenant's security deposit in partial satisfaction of the monetary award. No interest is payable on this deposit over the period of this tenancy.

As the landlord was partially successful in this application, I find that the landlord is entitled to recover the \$100.00 application filing fee from the tenant.

Conclusion

I order the landlord to retain the remaining \$195.50 from the tenant's security deposit.

I issue a monetary order in the landlord's favour in the amount of \$465.50 against the tenant. 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.

The remainder of the landlord's application 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: April 20, 2021

Residential Tenancy Branch