



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on December 11, 2020, wherein the Landlord sought monetary compensation from the Tenant in the amount of \$1,579.55 for unpaid rent, costs incurred to remove, move and store the Tenant's belongings, as well as recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for 1:30 p.m. on April 21, 2021. Only the Landlord called into the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 1:43 p.m. Additionally, 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.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord testified that she served the Tenant with the Notice of Hearing and the Application on December 18, 2020 by registered mail to the residential address provided by the Tenant at the time of the move out inspection. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. The Landlord advised that the package was returned. She then sent a further registered mail package to the Tenant on January 16, 2021; again, the package was returned.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act* (the “Act”), documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of December 23, 2020 (five days after the first package was sent) and I proceeded with the hearing in their absence.

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

The Landlord was cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. She confirmed her understanding of this requirement and further confirmed she was not making recordings of the hearing.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord recover the filing fee?

Background and Evidence

This residential tenancy began March 31, 2015. Monthly rent at the start of the tenancy was \$1,100.00 and was \$1,127.50 at the time the tenancy ended. The Tenant paid a \$500.00 security deposit at the start of the tenancy. The tenancy ended on November 30, 2020 pursuant to a 2 Month Notice to End Tenancy for Landlord’s Use.

The Landlord confirmed the Tenant was given October 2020 as their free month pursuant to section 51(1) of the *Act*. The Tenant paid half of November and failed to pay the balance of \$627.50. The Landlord sought compensation for this amount.

The Landlord also testified that the Tenant left numerous belongings in the rental unit such that she had to pay \$553.60 to have them removed as well as \$198.45 in storage fees; in the claim before me she also sought recovery of these amounts. In support of this portion of her claim the Landlord provided photos of the items as well as related invoices.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;

- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Pursuant to section 26 of the *Act* a tenant must pay rent when rent is due. I find the Tenant was obligated to pay monthly rent in the amount of \$1,127.50. I accept the Landlord's undisputed testimony and evidence that the Tenant failed to pay half a month's rent for November 2020. I therefore award the Landlord the **\$627.50** claimed.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I accept the Landlord's testimony and documentary evidence that the Tenant failed to remove his items from the rental unit such that the Landlord incurred the removal, moving and storage costs. I find these amounts to be recoverable from the Tenant.

As the Landlord has been successful in her Application, I find she is entitled to recover the filing fee pursuant to section 72 of the *Act*. I therefore find the Landlord has established a monetary claim of **\$1,479.55** for the following.

Unpaid rent for November 2020	\$627.50
Cost to move Tenant's belongings	\$553.60
Storage of Tenant's belongings	\$198.45
Filing fee	\$100.00
TOTAL AWARDED	\$1,479.55

Pursuant to sections 38 and 72 of the *Act* I authorize the Landlord to retain the Tenant's \$500.00 security deposit towards the amounts awarded and I grant the Landlord a Monetary Order pursuant to section 67 of the *Act* in the amount of **\$979.55**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Landlord's claim for monetary compensation from the Tenant is granted. The Landlord is authorized to retain the Tenants' security deposit and is granted a Monetary Order for the balance due.

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 30, 2021

Residential Tenancy Branch