



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL MNRL-S MNDCL FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order in the amount of \$22,308.25 for unpaid rent or utilities, for damage to the unit, site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to retain the tenant's security deposit towards any amount owing, and to recover the cost of the filing fee.

The landlord ZG (landlord) and an agent for the landlord, SL (agent) attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord and agent were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated December 17, 2020 (Notice of Hearing), application and documentary evidence were considered. The landlord testified that the Notice of Hearing, application and documentary evidence were served on the tenant by registered mail at an address the landlord was able to find through the assistance of another landlord where the tenant moved to. A registered mail tracking number was provided, which has been included on the Style of Cause for ease of reference. According to the online Canada Post registered mail tracking website, the registered mail package was mailed on December 20, 2021 and was delivered on December 22, 2020. Section 90 of the Act stated that documents sent by registered mail are deemed served 5 days after they are mailed. Therefore, I find the tenant was sufficiently served as of December 25, 2020.

Given the above, I find this application to be unopposed by the tenant as I find the tenant was duly served on December 25, 2020 and did not attend the hearing. The hearing continued without the tenant present in accordance with Rule 7.1 and Rule 7.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules), which address consequences for not attending a dispute resolution hearing.

Preliminary and Procedural Matters

The landlord and agent were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The landlord and agent were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the landlord and agent were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither the landlord nor agent had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the landlord confirmed the email addresses of the landlord and tenant at the outset of the hearing and stated that they understood that the decision would be emailed to both parties. Any resulting monetary order will be emailed to the landlord only for service on the tenant.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. As the fixed-term tenancy portion was not checked-off on the tenancy agreement, the landlord was advised that the tenancy agreement was a month to month tenancy and not a fixed-term tenancy. In addition, although the landlord attempted to make the tenancy a fixed-term tenancy by indicating a vacancy date of March 31, 2021, the landlord failed to fill out the Reason Tenant Must Vacate (Required) portion of the tenancy agreement and the Residential Tenancy Regulation section number on the tenancy agreement.

As a result, the landlord was advised during the hearing, that the Mutual Agreement to End Tenancy document signed on the day the tenancy began was of no force or effect as I find the landlord attempted to contract outside of the Act which I will address further in my analysis below.

The tenancy began on March 17, 202 and monthly rent is listed as \$2,950.00 per month. Although the due date of each month was also not listed on the tenancy agreement, I will accept the landlord's undisputed testimony that the tenant was advised that rent was due on the first day of each month. The landlord testified that the tenant paid the security deposit of \$1,500.00 by bank draft, which the landlord continues to hold. The landlord stated that the tenant has failed to provide their written forwarding address since the landlord deemed the rental unit as abandoned on October 13, 2020.

According to the tenancy agreement, the monthly rent did not include water, electricity, or gas. The landlords monetary claim is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Rent for March 17, 2020 to October 31, 2020	\$15,297.50
2. Water utility bill – April to June 2020	\$108.10
3. Cleaning fee	\$477.75
4. Garbage removal, repairs	\$860.00
5. Car towing fee	\$126.00
6. Grass cutting	\$60.00
7. November 2020 loss of rent	\$2,950.00
8. Eviction service fee	\$1,050.00
9. New tenant placement fee	\$1,278.90
10. Filing fee	\$100.00
TOTAL	\$22,308.25

Regarding item 1, the landlord has claimed rent arrears of \$15,297.50 comprised as follows:

Description	Amount
1. Unpaid March 2020 rent (pro-rated from March 17, 2020 to March 31, 2020)	\$1,475.00
2. Unpaid April 2020 rent	\$2,950.00
3. Unpaid May 2020 rent	\$2,950.00
4. Unpaid June 2020 rent	\$2,950.00

5. Unpaid July 2020 rent	\$2,950.00
6. Unpaid August 2020 rent	\$2,950.00
7. Unpaid September 2020 rent	\$2,950.00
8. Unpaid October 2020 rent	\$2,950.00
SUBTOTAL	\$22,125.00
<i>(Less tenant payment on April 8, 2020 of \$2,950.00)</i>	<i>-(\$2,950.00)</i>
<i>(Less two tenant payments on June 25, 2020 of \$1,250.00 and \$127.50)</i>	<i>-(\$1,377.50)</i>
<i>(Less tenant payment on July 4, 2020 of \$1,000.00)</i>	<i>-(\$1,000.00)</i>
<i>(Less offset of tenant's security deposit of \$1,500.00)</i>	<i>-(\$1,500.00)</i>
TOTAL RENT ARREARS OWING BY TENANT TO LANDLORD	\$15,297.50

The testimony and the landlord and agent reflected the table listed above for this item.

Regarding item 2, the landlord and agent described that the tenant failed to pay the utility bill for water in the amount of \$108.10. The landlord presented a utility bill for water for the time period of April 1, 2020 to June 30, 2020 in the amount of \$108.10.

Regarding item 3, the landlord has claimed for a cleaning fee of \$477.75. The landlord presented a cleaning invoice dated November 12, 2020, which supports that the landlord paid a cleaning company \$477.75 for a move-out clean. The landlord stated that the tenant failed to clean the rental unit before abandoning the rental unit as of October 13, 2020.

Regarding item 4, the landlord has claimed \$860.00 for garbage removal and repairs to the unit, site or property. The landlord presented an invoice for \$860.00 which describes garbage removal, repairs to the rental unit handrail, faucet, sink, laundry door and a missing remote for the garage, and to power wash the driveway. The landlord stated that they are charging for what the tenant damaged and the garage left behind which had to be disposed of.

Regarding item 5, the landlord has claimed \$126.00 to have a scrap car towed that was left behind at the rental unit and was of no value according to the landlord and was uninsured. The landlord presented an invoice in the amount of \$126.00 in support of this portion of their claim.

Regarding item 6, the landlord has claimed \$60.00 for lawn cutting and presented an invoice for same in the amount of \$60.00. The landlord stated that the tenant failed to cut the grass of the rental property.

Regarding item 7, the landlord has claimed \$2,950.00 for loss of November 2020 rent as the tenant vacated the rental unit without a written Notice to End Tenancy document and instead abandoned the rental unit on October 13, 2020. The landlord stated that due to the condition of the rental unit and the work required, they were unable to secure a new tenant until December 1, 2020.

Regarding item 8, the landlord has claimed \$1,050.00 for the use of the services of Vancouver Eviction Services, which was dismissed as the landlord was advised that making the decision to use a company to assist with evicting a tenant is not required by law and was at the discretion of the landlord. I will address this item further in my analysis below.

Regarding item 9, the landlord has claimed \$1,278.90 for the use of the services of Heyday Realty Inc. for a new tenant placement fee, which was dismissed as the landlord was advised that making the decision to use a company to assist with finding a new tenant is not required by law and was at the discretion of the landlord. I will address this item further in my analysis below.

Analysis

Based on the undisputed documentary evidence and the undisputed testimony of the landlord and agent provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant was served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, and as noted above, I consider this matter to be unopposed by the tenant.

As noted above, I will first address the Mutual Agreement to End Tenancy document (Mutual Agreement) before me. I find that it is of no force or effect as I find the landlord attempted to contract outside of the Act. Section 5 of the Act applies and states:

This Act cannot be avoided

5(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

[emphasis added]

As of December 11, 2017, section 44(1)(b) of the Act changed to require a specific circumstance under section 13.1 of the Residential Tenancy Regulation (Regulation) as section 97(1)(a.1) of the Act was also changed, when requiring a tenant to vacate the unit at the end of a specific term. I find the Mutual Agreement was an attempt to contract outside of the Act as the tenancy agreement did not include the reason listed under section 13.1 of the Regulation. Given the above, I find the tenancy agreement was a month to month tenancy as the fixed-term portion did not comply with the Act.

I will now address the remainder of the landlord's claim.

Item 1 – I accept the landlord's undisputed testimony that the landlord is owed rent arrears in the total amount of \$15,297.50 as claimed and described above. I find the tenant breached section 26 of the Act, which states that the tenant must pay rent on the date that it is due in accordance with the tenancy agreement, which the landlord affirmed was the first day of each month. Consistent with the landlord's table, I grant the landlord authority under section 38 of the Act to retain the tenant's full security deposit of \$1,500.00, which has accrued no interest, to offset the rent owed, and which totals the amount awarded of \$15,297.50. Therefore, I find the landlord has met the burden of proof and I grant the landlord **\$15,297.50** for this portion of their claim.

Item 2 – As the tenancy agreement clearly indicates that water is not included in the monthly rent, I find the landlord has met the burden of proof by provided a copy of the unpaid water bill in the amount of \$108.10. The utility bill for water is for the time period of April 1, 2020 to June 30, 2020. I find the tenant was responsible for that amount and therefore I find the tenant breached the tenancy agreement and I award the landlord **\$108.10** for this item as claimed.

Item 3 - The landlord has claimed for a cleaning fee of \$477.75. I accept the landlord's undisputed testimony that the tenant failed to clean the rental unit before abandoning the unit. I also find the cleaning invoice dated November 12, 2020, supports that the landlord paid a cleaning company \$477.75 for a move-out clean. As a result, I find the tenant breached section 37 of the Act, which requires that the tenant leave the rental unit reasonably clean at the end of the tenancy. Therefore, I find the landlord has met the burden of proof and I grant the landlord **\$477.75** as claimed for this item.

Item 4 - The landlord has claimed \$860.00 for garbage removal and repairs to the unit, site or property. I find the invoice for \$860.00 supports the amount claimed for garbage removal, repairs to the rental unit handrail, faucet, sink, laundry door and a missing remote for the garage, and to power wash the driveway. As a result, I find the tenant breached section 37 of the Act, which requires that the tenant leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear at the end of the tenancy. I find the damage exceeded normal wear and tear. Therefore, I find the landlord has met the burden of proof and I grant the landlord **\$860.00** as claimed for this item.

Item 5 - The landlord has claimed \$126.00 to have a scrap car towed that was left behind at the rental unit and was of no value according to the landlord and was uninsured. I find the landlord's invoice of \$126.00 supports this portion of their claim. As a result, I find the tenant breached section 37 of the Act, which requires that the tenant leave the rental unit reasonably clean at the end of the tenancy and I find that the tenant is liable for the expenses related to the scrap car left behind after abandoning the rental unit. Therefore, I find the landlord has met the burden of proof and I grant the landlord **\$126.00** as claimed for this item.

Item 6 - The landlord has claimed \$60.00 for lawn cutting and presented an invoice for same in the amount of \$60.00. I accept the landlord's undisputed testimony that the tenant failed to cut the grass of the rental property. RTB Policy Guideline 1, Landlord & Tenant – Responsibility for Residential Premises (Policy Guideline 1) it states under Property Maintenance 3 the following:

Generally **the tenant** who lives in a single-family dwelling is responsible for routine yard maintenance, **which includes cutting grass...**

[emphasis added]

Based on the above and considering that the rental unit is a single-family dwelling, I find the tenant is liable for not cutting the grass before abandoning the rental unit and therefore, I grant the landlord **\$60.00** as claimed.

Item 7 - The landlord has claimed \$2,950.00 for loss of November 2020 rent as the tenant vacated the rental unit without a written Notice to End Tenancy document and instead abandoned the rental unit on October 13, 2020. The landlord stated that due to the condition of the rental unit and the work required, they were unable to secure a new tenant until December 1, 2020. Section 45(1) of the Act applies and states:

Tenant's notice

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

[emphasis added]

Based on the above, I find the tenant breached section 45(1) of the Act by failing to give formal written notice under the Act and therefore is liable for \$2,950.00 in lost rent for November 2020. I grant the landlord **\$2,950.00** for this portion of their claim accordingly.

Items 8 and 9 – I have dismissed both items 8 and 9 as I find the landlord has failed to meet the burden of proof. I find it was the discretion of the landlord to hire someone and was not required by law and therefore is not the responsibility of the tenant. Therefore, items 8 and 9 are dismissed without leave to reapply, due to insufficient evidence.

Item 10 - As the landlord's application had merit, I grant the landlord **\$100.00** pursuant to section 72 of the Act for the recovery of the cost of the filing fee under the Act.

Based on the above, I find the landlord has established a total monetary claim of **\$19,979.35** as follows:

ITEM DESCRIPTION	AMOUNT AWARDED
1. Rent for March 17, 2020 to October 31, 2020	\$15,297.50
2. Water utility bill – April to June 2020	\$108.10
3. Cleaning fee	\$477.75
4. Garbage removal, repairs	\$860.00
5. Car towing fee	\$126.00
6. Grass cutting	\$60.00
7. November 2020 loss of rent	\$2,950.00
8. Eviction service fee	Dismissed
9. New tenant placement fee	Dismissed
10. Filing fee	\$100.00
TOTAL	\$19,979.35

Pursuant to section 38 of the Act, I authorize the landlord to retain the tenant's full security deposit of \$1,500.00, which includes no interest, if partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of **\$18,479.35.**

Conclusion

The landlord's application is mostly successful. The landlord has been granted a monetary order pursuant to section 67 of the Act, in the amount owing of \$18,479.35. The landlord must serve the tenant with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division). The tenant may be held liable for all costs associated with enforcing the monetary order.

The landlord has also been authorized to retain the tenant's full security deposit of \$1,500.00 as described above.

This decision will be emailed to the landlord and the tenant. The monetary order will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 23, 2021

Residential Tenancy Branch