



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

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:51 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's agent (the "agent") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 agent and I were the only ones who had called into this teleconference.

The landlord applied for substituted service on the tenant via email, which was granted in Substituted Service Decision dated January 28, 2021. The agent testified that the tenant was served with this application for dispute resolution and Substituted Service Decision via email. The landlord testified that the tenant was served with the landlord's amendment, Substituted Service Decision and evidence via email on May 17, 2021.

The serving emails were not entered into evidence. In accordance with Rule 3.19 of the Residential Tenancy Branch Rules of Procedure I allowed the landlord 24 hours to enter the serving emails into evidence. The landlord entered into evidence an email dated

February 3, 2021 in which the tenant was served, at the email address approved of in the Substituted Service Decision, with the following documents:

- RTB Form 114;
- Respondent Instructions;
- Landlord's Application for Dispute Resolution; and
- Substituted Service Decision.

The landlord also entered into evidence an email notification dated February 3, 2021, stating that the delivery of the above email completed. I find that the tenant was served with the above documents in accordance with the January 28, 2021 Substituted Service Decision.

The landlord did not enter into evidence the email serving the tenant with the landlord's amendment and evidence; however, the landlord did enter into evidence a confirmation email stating that delivery of the May 17, 2021 email was completed at the email address approved of in the Substituted Service Decision. I accept the agent's undisputed testimony that the May 17, 2021 email sent to the tenant contained the landlord's amendment, evidence and Substituted Service Decision. I find that the above documents were served on the tenant in accordance with the Substituted Service Decision.

I find that the tenant is not prejudiced by the allowance of the service evidence as the service evidence was sent to the tenant in accordance with the Substituted Service Decision.

The agent was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The agent testified that they are not recording this dispute resolution hearing.

The agent confirmed their email address for service of this decision and order.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?

3. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the agent, not all details of the agent's submissions and arguments are reproduced here. The relevant and important aspects of the agent's claims and my findings are set out below.

The agent provided the following undisputed testimony. This tenancy began on January 1, 2017 and ended on February 1, 2021. Monthly rent in the amount of \$1,599.00 was payable on the first day of each month. A security deposit of \$745.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The agent testified that the tenant signed a Form K, the Form K was not entered into evidence at the time of this hearing but was entered into evidence after this hearing. I did not authorize the landlord to enter the Form K late.

The agent testified that the landlord was granted an Order of Possession in a previous arbitration. The file number for the previous arbitration is on the cover page of this decision. The agent testified that the tenant was served with the Order of Possession but refused to move out. The agent testified that the Order of Possession was filed with the Supreme Court of British Columbia at a cost of \$120.00 and a writ of possession was granted. The agent is seeking the \$120.00 filing fee from the tenant. A receipt for same was entered into evidence.

The agent testified that the bailiff attended at the subject rental property on February 1, 2021 and evicted the tenant. The agent entered into evidence a bailiff invoice for \$3,072.42. The agent is seeking the \$3,072.42 bailiff fee from the tenant.

The agent testified that the tenant did not provide a forwarding address at the end of this tenancy and did not return the keys or fob. The agent testified that because the tenant did not return the keys, the locks had to be changed. The agent entered into evidence a receipt for a locksmith in the amount of \$178.50.

The agent testified that the tenant refused access to fire inspectors on two occasions and so the landlord had to arrange a third visit at a cost of \$60.00 after the tenant was evicted. A receipt for same was entered into evidence. The agent is the \$60.00 fee from the tenant.

The agent testified that the tenant did not pay the \$200.00 move out fee required by the strata. The agent entered into evidence an email from the agent in which the agent requests a cheque made out to the strata in the amount of \$200.00 for the move out fee.

The agent testified that the tenant has not paid rent for the months of October 2020, November 2020, December 2020 and January 2021 for a total of \$6,369.00 owed by the tenant. The agent entered into evidence an email dated January 22, 2021 from the accounting department of the company managing the subject rental property which states:

I confirm that [the tenant] owes October, November, December and January rent at [the subject rental property].

The total rent outstanding for the 4 months at \$1599 per month comes to \$6396

The agent testified that the landlord is seeking to recover the filing fee for this application and the previous application.

The agent testified that the subject rental property was not clean when the tenant was evicted and a cleaning agency was hired to clean the property. A receipt for \$189.00 was entered into evidence. The agent is seeking to recover this from the tenant.

The agent testified that the landlord is seeking the \$100.00 filing fee for this application and for the last application.

Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find that the tenant was required to move out of the subject rental property two days after the tenant was served of the Order of Possession, in accordance with section 55 and 37(1) of the *Act*. I accept the agent's undisputed testimony that the tenant did not move out of the subject rental property in accordance with sections 37(1) and 55 of the *Act* and the Order of Possession.

I find that the tenant's failure to move out in accordance with sections 55 and 37(1) of the *Act* and the Order of Possession caused the landlord to incur the \$120.00 filing fee for the writ of possession and the \$3,072.42 bailiff fee. I find that the landlord has proved the value of the loss suffered as receipts for same were entered into evidence. No mitigation issues were presented at the hearing. Pursuant to my above findings, I award the landlord the \$120.00 filing fee and the \$3,072.42 bailiff fee.

Section 37(2) of the *Act* states:

- (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.

Based on the undisputed testimony of the agent, I find that the tenant did not return all the keys and other means of access and did not leave the unit reasonably clean. I find that as a result the landlord incurred locksmith and cleaning fees in the amount of \$178.50 and \$189.00 respectively. The value of these losses were proved by the receipts entered into evidence. No mitigation issues were presented. I award the landlord the \$178.50 locksmith fee and the \$189.00 cleaning fee.

The agent testified that the tenant failed to pay the \$200.00 move out fee required by the strata. At the time of this hearing the landlord had not entered into evidence the strata rules requiring the \$200.00 move out fee or a Form K signed by the tenant. After the hearing the landlord entered into evidence the Form K; however, I only authorized the landlord to upload the service evidence, not the Form K. As the Form K was not submitted in accordance with the Rules or at my direction, I will not consider it. I find that the landlord has not proved the loss suffered was the responsibility of the tenant due to the lack of a Form K properly entered into evidence and the lack of strata rules in evidence. I dismiss this claim without leave to reapply.

I accept the agent's undisputed testimony that the tenant refused to grant access for the fire inspection contrary to section 29 of the *Act* and that this resulted in a \$60.00 loss which was evidenced by the receipt entered into evidence. No mitigation issues were presented. I award the landlord the \$60.00 fire inspection fee.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$1,599.00 on the first day of each month. Based on the testimony of the agent and the email from the management company's accounting department I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlords \$6,396.00 in unpaid rent from October 2020 to January 2021.

As the landlord was successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*. I find that the landlord is not entitled to recover the filing fee from the previous arbitration because the landlord's claim for the filing fee was dismissed without leave to reapply. The matter is *res judicata* and can not be re-heard.

Section 38 of the *Act* requires the landlord to return the tenant's security deposit to the tenant within 15 days of the later of the end of the tenancy and the receipt of the tenant's forwarding address in writing. I accept the agent's undisputed testimony that the tenant did not provide a forwarding address at the end of this tenancy. I find that the landlord was therefore not required to return the security deposit to the tenant.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$745.00 in part satisfaction of their monetary claim for unpaid rent against the tenant.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Bailiff fees	\$3,072.42
Writ of possession filing fee	\$120.00
Locksmith fee	\$178.50
Cleaning fee	\$189.00
Fire inspection fee	\$60.00
Unpaid rent	\$6,396.00
Filing Fee	\$100.00
Less security deposit	-\$745.00
TOTAL	\$9,370.92

The landlord is provided with this Order in the above terms and 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: June 02, 2021

Residential Tenancy Branch