



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ReMax Check Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDL-S, MNRL-S, MNDCL-S, FFL**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended the hearing through the agent K.I. ("the landlord"). The landlord was given an opportunity to provide affirmed testimony and submit evidence. The tenant did not attend the hearing which lasted 29 minutes.

Service by Landlord upon Tenant

As the tenant did not attend the hearing, I asked the landlord to confirm that the tenant was served with the Notice of Hearing and Application for Dispute Resolution for this hearing.

Landlord's agent K.I. testified that they personally served the tenant with the landlord's documents at the tenant's place of employment on February 26, 2021.

Section 15 of Residential Tenancy Policy Guideline #12. Service Provisions explains the requirement for proof of service, as follows, in part:

Where proof of service is required, the person who actually served the documents must either:

- *be available as a witness in the hearing to prove service, or*
- *provide a signed statement with the details of how the documents were served.*

Proof of service personally should include the date and time of service, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served the documents.

As the landlord's agent was the person who "actually served the documents" and was able to testify to the date and time of service, the method of service, location of service, and the specifics of the documents served, I find that the landlord has proven service of the Notice of Hearing and Application for Dispute Resolution on the tenant.

Further to the landlord's testimony, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution February 26, 2021 pursuant to sections 89 and 90.

Recording

The landlord was 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. They were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, they 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. They had no questions about my direction pursuant to RTB Rule 6.11.

In addition, the landlord confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

Attendance of Tenant

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 29 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

Accordingly, the hearing was conducted in the absence of the tenant.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, reimbursement of the filing fee, and authorization to apply the security deposit to the award?

Background and Evidence

The landlord submitted documents and photographs in a 29-minute hearing. While I have turned my mind to all the documentary evidence and the testimony of the landlord, not all details are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The landlord provided uncontradicted evidence regarding the tenancy as the tenant did not attend the hearing. The landlord submitted a copy of the agreement and testified as to the following particulars of the tenancy as follows:

ITEM	DETAILS
Type of tenancy	Monthly
Date of beginning	December 1, 2018
Date of ending	December 31, 2020
Monthly rent payable on 1 st	\$1,950.00
Security deposit	\$975.00
Pet deposit	None

Outstanding rent at time of hearing (unpaid for last month of tenancy, December 2020)	\$1,950.00
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The landlord clarified their monetary claim during the hearing which is summarized in the following table:

ITEM	AMOUNT
Rent outstanding	\$1,950.00
Strata fines	\$600.00
Painting	\$105.00
Repairs	\$510.07
Cleaning	\$600.00
Filing fee reimbursement	\$100.00
TOTAL CLAIM - DAMAGES	\$3,865.07

The landlord testified that a condition inspection was conducted at the beginning of the tenancy, a signed copy of which was submitted. The report indicated the unit was in good condition in all relevant aspects. The landlord testified that the unit was new and had never been occupied previously.

The landlord testified that the tenant vacated suddenly in December 2020 and dropped the keys off, telling the landlord they could keep the security deposit. No condition inspection on moving out took place. The tenant did not leave a forwarding address.

The landlord testified that the tenant left the unit in "horrible" condition; it was filthy and required repairs including patching/painting, fixing baseboards and replacement of a cracked sink. The landlord incurred the cleaning and repairs as stated above, receipts for all of which were submitted as evidence.

The landlord's testimony and documentary evidence supported each claim for damages and compensation. The landlord submitted evidence of the strata fines.

The landlord requested authorization to apply the security deposit to the award as follows:

ITEM	AMOUNT
Total claim (above)	\$3,865.07
(Less security deposit)	(\$975.00)
TOTAL CLAIM	\$2,890.07

The landlord requested a Monetary Order in the amount of **\$2,890.07**.

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.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the respondent party (the tenant) to the tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the applicant (landlord) proven the amount or value of their damage or loss?
4. Has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

...

67 Without limiting the general authority in section 62 (3) [. . .] 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.

Each of the above four tests are considered in my findings.

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Based on the uncontradicted evidence of the landlord and the comprehensive, credible documentary evidence, I find the landlord has met the burden of proof on a balance of probabilities with respect to all aspects of the claims. I give substantial weight to the landlord's evidence.

Contrary to the tenancy agreement and the Act, I find the tenant failed to pay rent in the last month of the tenancy. I find the tenant's breach of the Act by failing to leave the unit clean and in good repair caused the landlord to incur the expenses claimed for which the landlord reasonably seeks compensation. I find the landlord has met the burden of proof with respect to the amount of the outstanding rent and expenses claimed. I find the landlord has made reasonable efforts to mitigate loss.

As the landlord has been successful in the application, the landlord is entitled to reimbursement of the filing fee of \$100.00.

Therefore, I find the landlord is entitled to a monetary order pursuant to section 67 in the amount of **\$3,865.07** for unpaid rent, compensation for the damages and loss, and reimbursement of the filing fee as set out in the following table:

ITEM	AMOUNT
Rent outstanding	\$1,950.00
Strata fines	\$600.00
Painting	\$105.00
Repairs	\$510.07
Cleaning	\$600.00

Filing fee reimbursement	\$100.00
TOTAL AWARD	\$3,865.07

Further to the offsetting provisions under section 72, the landlord is entitled to apply the security deposit to the monetary award. The landlord is awarded a Monetary Order in the amount of **\$2,890.07** as set out in the following table:

ITEM	AMOUNT
Total Claim	\$3,865.07
(Less security deposit)	(\$975.00)
TOTAL CLAIM	\$2,890.07

Conclusion

I grant a Monetary Order to the landlord in the amount of **\$2,890.07**

This Monetary Order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order in the Courts of the Province of British Columbia to be 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: July 05, 2021

Residential Tenancy Branch