



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, FFT (tenant);**
MNDL-S, MNRL-S, MNDCL-S, OPR, OPC, FFL (landlord)

Introduction

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

- Cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

This hearing also 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*;
- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent ("Ten-Day Notice") pursuant to sections 46 and 55;
- An order for possession under a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to sections 47 and 55;
- 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.

Order of Possession

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 2, 2021 for \$1,542.50 in unpaid rent (the “10 Day Notice”). The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective date of March 12, 2021.

An Order of Possession was granted on April 23, 2021 following a Direct Request under the file number appearing on the first page. An Application for Review was dismissed on April 30, 2021. The landlord testified the landlord filed the Order in the Supreme Court and retained a bailiff. The tenant vacated the unit on May 11, 2021.

In the meantime, the landlord issued a One Month Notice to End Tenancy for Cause served March 16, 2021 which is the subject of this application. The tenant applied for dispute resolution on March 19, 2021. The landlord brought the cross application on April 19, 2021.

As an Order of Possession was previously granted and the tenant has vacated the unit, the landlord withdrew the request for an Order of Possession.

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 40 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.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing – *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.*

As the tenant did not attend the hearing, I order the tenant's application dismissed without leave to reapply.

Service of Documents

As the tenant did not attend the hearing, the landlord provided affirmed testimony that the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on April 23, 2021 and deemed received by the tenant under section 90 of the *Act* five days later, that is, on April 28, 2021.

The landlord provided the Canada Post Tracking Number and a copy of receipt in support of service. Further to the landlord's testimony and supporting documents,

I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution on April 28, 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.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order and authorization to apply the security deposit to the award?

Background and Evidence

The landlord submitted a 100-page evidence package including many documents and photographs. The landlord submitted considerable testimony in a 40-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:

ITEM	DETAILS
Type of tenancy	Monthly
Date of beginning	February 1, 2019
Date tenant moved out	May 11, 2021
Monthly rent payable on 1 st	\$1,786.25
Security deposit	\$725.00
Pet deposit	None
Outstanding rent at time of hearing (until May 31, 2021)	\$3,772.50
Outstanding utilities	Not claimed

In the landlord's application, the landlord estimated their monetary claim as they did not have all the receipts at the date of filing. The landlord clarified their monetary claim during the hearing which is summarized in the following table:

ITEM	AMOUNT
Rent outstanding	\$3,772.50
Writ of Possession, filing and service	\$415.00

Cleaning fee (receipt submitted)	\$500.00
Dump fees (receipt submitted)	\$60.00
Repairs (receipt submitted, labour and materials)	\$2,007.44
TOTAL CLAIM - DAMAGES	\$6,754.94

The landlord testified the tenant was provided with copies of all receipts in the evidence package.

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 tenant refused to move out even after the landlord had obtained an Order of Possession and served it on the tenant. The landlord accordingly incurred expenses related to filing the Order in the Court and obtaining a Writ as set out in the above table.

The landlord stated that she served on the tenant “about 6” Notice of Final Opportunity to Schedule a Condition Inspection forms, all of which were submitted. The last Notice was dated May 6, 2021. The landlord testified that the tenant failed to attend all scheduled inspections and vacated without warning on May 11, 2021 leaving the unit in poor condition.

The landlord testified that the tenant left the unit “filthy” and in poor repair requiring work and expenses for cleaning, repairs and removal of garbage and personal items as stated above.

The landlord submitted an extensive evidence package supporting all aspects of the claims.

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

ITEM	AMOUNT
Total claim	\$6,754.94
(Less security deposit)	(\$725.00)
TOTAL MONETARY ORDER REQUESTED	\$6,029.94

Analysis

I have reviewed all relevant and admissible documentary evidence and testimony.

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.

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 which was credible and well-organized.

Contrary to the tenancy agreement and the Act, I find the tenant failed to pay rent in the amount claimed.

I find the tenant's breach of the Act 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 expenses claimed. I find the landlord has made reasonable efforts to mitigate loss.

Therefore, I find the landlord is entitled to a monetary order pursuant to section 67 in the amount of **\$6,754.94** 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	\$3,772.50
Writ of Possession, filing and service	\$415.00
Cleaning fee (receipt submitted)	\$500.00
Dump fees (receipt submitted)	\$60.00
Repairs (receipt submitted, labour and materials)	\$2,007.44
TOTAL CLAIM - DAMAGES	\$6,754.94

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 **\$6,029.94** as set out in the following table:

ITEM	AMOUNT
Total Claim (above)	\$6,754.94
(Less security deposit)	(\$725.00)
TOTAL MONETARY ORDER	\$6,029.94

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant a Monetary Order to the landlord in the amount of **\$6,029.94**.

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