



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Twin Sun Technologies and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL, MNDL, MNDCL, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on December 30, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent;
- a monetary order for damage, compensation, or loss; and
- an order granting recovery of the filing fee.

The reconvened hearing was scheduled for 1:30pm on September 20, 2021 as a teleconference hearing. Only the Landlord's Agent D.S. attended the hearing at the appointed date and time. No one appeared for the Tenants. The conference call line remained open and was monitored for 21 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Adjourned Hearing which was sent to each party on May 25, 2021. During the hearing, I also confirmed from the online teleconference system that the Landlord's Agent and I were the only persons who had called into this teleconference.

The Landlord's Agent was provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage compensation or loss, pursuant to Section 67 of the *Act*?

2. Is the Landlord entitled to a monetary order for unpaid rent and utilities, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord's Agent testified that the tenancy began on April 8, 2020. During the tenancy, the Tenants were required to pay rent, utilities, and storage fees in the amount of \$2,055.00 to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$925.00 which the Landlord continues to hold. The Landlord's Agent stated that the Tenants overheld the rental unit until October 10, 2020 at which point, they vacated the rental unit without notifying the Landlord.

The Landlord's Agent stated that the Tenants failed to pay rent in the amount of \$2,055.00 for both September and October 2020, before vacating the rental unit on October 10, 2020. The Landlord's Agent stated that he served the Tenants with a 10 Day Notice and that they did not comply with the effective date of the Notice. The Landlord's Agent stated that the Tenants overheld the rental unit until October 10, 2020 at which point, they moved out without telling the Landlord.

The Landlord is claiming \$202.00 for the use of a Process Server to serve the 10 Day Notice to End Tenancy to the Tenants on September 12, 2020. The Landlord provided a copy of the invoice in the amount of \$102.90 in support.

The Landlord's Agent stated that they were unsure as to when the Tenants were going to move out, therefore, the Landlord was unable to advertise the rental unit for rent until they had vacant possession. The Landlord's Agent stated that the Landlord secured a new tenancy for November 15, 2020. As such, the Landlord is also claiming for the loss of rent from November 1 to 15, 2020 for a total claim of \$5,137.50 for loss of rent.

The Landlord is claiming \$150.00 for cleaning the rental unit. The Landlord provided several pictures in support. The Landlord is also claiming \$125.00 in relation to repairing 104 holes that were left in the walls throughout the rental unit. The Landlord's Agent stated that he had some left-over paint, therefore, he is only charging for the time it took to repair the walls.

The Landlord's Agent is claiming \$200.00 to dispose of garbage and various items left behind by the Tenants at the end of the tenancy. The Landlord provided several

pictures of the abandoned items in support. The Landlord is also claiming \$45.00 to replace two smoke detectors which had been removed from the rental unit during the tenancy.

The Landlord is claiming \$619.50 in relation to hiring a Skip Tracer service to locate the Tenants following the end of the tenancy. The Landlord's Agent stated that the Tenants did not provide the Landlord with their forwarding address. The Landlord's Agent confirmed that he had applied to the Residential Tenancy Branch for Substituted Service and was granted an order to serve the Tenant D.O. the Application for Dispute Resolution, with supporting documents by email. The Landlord's Agent stated that he was out of town when the January 14, 2021 Substituted Service Decision was made and did not retrieve the decision in a timely fashion. As such, the Landlord's Agent stated that he felt it was necessary to track the location of the Tenants by Skip Tracer.

The Landlord is claiming \$244.59 and \$697.75 in relation to serving the Tenants with the Notice of Hearing, and documentary evidence by way of Process Server after the Skip Tracer service was able to locate the Tenants.

If successful, the Landlord is seeking the return of the filing fee.

Analysis

Based on the uncontested oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and

4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, the regulations, or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

The Landlord is claiming \$5,137.50 for loss of rent. I accept that the Tenants failed to pay rent in the amount of \$2,055.00 in September and October 2020 before vacating the rental unit on October 10, 2020. As such, I find that the Tenants breached Section 26 of the Act, therefore, the Landlord is entitled to monetary compensation in the amount of **\$4,110.00**.

The Landlord's Agent stated that he was unable to re-rent the rental unit until November 15, 2020, therefore, the Landlord is seeking further compensation for the loss of rent from November 1 to 15, 2020. In this case, I find that the Landlord provided insufficient evidence to demonstrate their efforts to re-rent the rental unit in a timely fashion to mitigate their loss. As such, I dismiss the Landlord's claim for further compensation relating to loss of rent without leave to reapply.

The Landlord is claiming \$202.00 for the use of a Process Server to serve the 10 Day Notice to End Tenancy to the Tenants on September 12, 2020. The Landlord provided a copy of the invoice in the amount of \$102.90 in support. In this case, I find that the Landlord was at liberty to serve the Tenants with the Notice by other, more cost-effective means which are outlined in Section 88 of the Act. As such, I find that the Landlord was not required to hire a Process Server; therefore, did not mitigate their loss. Furthermore, the cost associated with serving documents are not recoverable under the *Act*. As such, I dismiss this claim without leave to reapply.

The Landlord is claiming \$150.00 for cleaning the rental unit, \$125.00 in relation to repairing 104 holes that were left in the walls throughout the rental unit, \$200.00 for the

cost of disposing items which were abandoned by the Tenants, and \$45.00 to replace missing smoke detectors.

Section 37(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.

In this case, I find that the Landlord provided sufficient evidence to demonstrate that the Tenants breached Section 37 of the *Act*. As such, I find that the Landlord is entitled to monetary compensation in the amount of **\$520.00** for cleaning, wall repairs, dump fees, and smoke detector replacement.

The Landlord is claiming \$619.50 in relation to hiring a Skip Tracer service to locate the Tenants following the end of the tenancy as the Tenants did not provide the Landlord with their forwarding address. The Landlord is claiming \$244.59 and \$697.75 in relation to serving the Tenants with the Notice of Hearing, and documentary evidence by Process Server, after the Skip Tracer service was able to locate the Tenants.

I find that the Landlord was successful with their Application for Substituted Service which permitted the Landlord to serve the above-mentioned documents to Respondent D.O. by email. While the Landlord's Agent stated that they did not retrieve the Substituted Service Decision in a timely fashion, I find that the Landlord did not mitigate their loss and should have checked their emails or had someone monitor the emails on their behalf while they were away. As such, I dismiss this claim to hire the Skip Tracer without leave to reapply.

Lastly, the Landlord is claiming for the cost associated with serving the Notice of Hearing and documentary evidence to the Tenants by using a Process Server. I find that the Landlord was at liberty to serve the Tenant D.O by email, as permitted in the Substituted Service Decision, or else, the Landlord could have served the Tenants by Canada Post Registered Mail, as outlined in Section 89 of the *Act*. Furthermore, these costs are not recoverable under the *Act*. In light of the above, I dismiss the Landlord's claims for service of documents to the Tenants without leave to reapply.

Having been partially successful, I find the Landlord is entitled to recover the **\$100.00** filing fee paid to make the Application. I also find it appropriate in the circumstances to

order that the Landlord retain the security deposit in the amount of \$925.00 in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$3,805.00, which has been calculated below;

Claim	Amount
Unpaid rent:	\$4,110.00
Cleaning/GarbageRemoval/ Repairs	\$520.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	<i>-\$925.00</i>
TOTAL:	\$3,805.00

Conclusion

The Landlord has established an entitlement to monetary compensation and has been provided with a monetary order in the amount of **\$3,805.00**. The order should be served to the Tenants as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: September 21, 2021

Residential Tenancy Branch