



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Royal LePage Nanaimo Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNRL, MNDL, MNDCL

Introduction

This hearing was originally scheduled for May 13, 2021, but was adjourned in order to allow the tenant to obtain representation, and recover from surgery. This reconvened hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for:

- a monetary order for compensation for unpaid rent, money owed, or monetary loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application pursuant to section 72.

JT and BG appeared for the landlord. The tenant attended with their advocate. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The tenant confirmed receipt of the landlord's application ('Application'). In accordance with section 89 of the Act, I find that the tenant duly served with the Application. All parties confirmed receipt of each other's evidentiary materials, with the exception of the tenant's late evidence which was uploaded on the day of the hearing.

Rule 3.14 of the RTB's Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 days before the hearing.

The late evidence was not served within the timelines prescribed by rule 3.14 of the Rules. Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one

party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

In this case, although I did not inform both parties at the last hearing that I would allow further evidence to be submitted, I am not satisfied that this late evidence was served in accordance with the service provisions as set out in the *Act* and Rules of Procedure. Accordingly, the late evidence was excluded for the purposes of this hearing. As the other evidence was served in accordance with section 88 of the *Act*, I find the parties duly served with this evidence, and this evidence was considered for this decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for losses or money owed arising out of this tenancy?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

This fixed term tenancy began on December 1, 2018, and continued on a month-to-month basis after November 30, 2019. Monthly rent was set at \$1,230.00 payable on the first of the month. The landlord had collected a security deposit in the amount of \$600.00 at the beginning of the tenancy, which the landlord still holds

An ex parte direct request proceeding was held on December 17, 2020, where the landlord was granted an Order of Possession as well as Monetary Order was granted for the November 2020 rent, as well as \$100.00 for recovery of the filing fee for that application. The tenant had filed for review consideration of that decision and order, which was dismissed. The tenant moved out on December 28, 2020.

The landlord is seeking compensation for the following losses associated with the tenancy:

Item	Amount
Unpaid Rent for December 2020	\$1,230.00
Unpaid Utilities – Water Bill	250.00
Broken Gate Repair	296.00
Dump Run	231.32
Cleaning	285.00
Extra Postage/Photocopying fees	120.81
Filing fee	100.00
Total Monetary Order Requested	\$2,513.13

The landlord submits that the tenant failed to pay rent for the month of December 2020, as well as the water bill in the amount of \$250.00. The landlord submitted a copy of the tenancy agreement which states that the utilities, including water, hydro, and gas, will be paid by the tenant, and an invoice for water delivery in the amount of \$250.00.

The tenant does not dispute that they did not pay for December 2020 rent, but argued that the landlord was responsible for providing potable water, and that the \$250.00 charge should be the responsible of the landlord, and not the tenant. The landlord responded that although the landlord was responsible for ensuring that the tenant had access to potable water, which the landlord notes was not always possible due the location of the rental home, the cost of the service of providing the water itself must be bore by the tenant as clearly stated on the tenancy agreement.

The landlord is also seeking reimbursement of the cost of repairing the gate, which the landlord believes was damaged by the tenant. The landlord argued that the fence and gate was in working order, and it appears that it was damaged by the tenant. The tenant argued that the gate was damaged due to wear and tear, and disputes that they had caused the damage. The tenant testified that they had previously informed the landlord that the gate had rotted off, and that the damage was due to general decay as the gate was old.

The landlord is also seeking reimbursement of cleaning and dumping costs associated with the tenant's failure to leave the home in reasonably clean condition. The landlord submitted photos of the items left behind by the tenant, which the landlord testified was substantial. The landlord testified that although the tenant may have cleaned the home, the cleaning performed was insufficient. The landlord also argued that the tenant was given the option to remove their own belongings, but failed to do so. The tenant argued that they had offered to, and arranged a dump run, but was turned away by the landlord.

Lastly, the landlord is seeking reimbursement of mailing and photocopying costs, which the landlord argued were extra costs associated with having to send three separate packages by registered mail as the tenant had filed two disputes, naming their two children as applicants.

Analysis

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*, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.”

In this case, the tenant failed to pay rent for December 2020, and therefore the landlord is entitled to a monetary order for the unpaid rent.

In consideration of the landlord’s claim for reimbursement of the cost of water delivery, I find that the home is located in an area where potable water is not provided by the municipality, but paid for by way of a delivery service by the owner of the property. In this case, although the landlord may be responsible for obtaining this service, I find the tenancy agreement clearly states that the tenant is responsible for this delivery cost. I am not satisfied that the tenant is in possession of an order of an Arbitrator allowing the tenant to deduct this cost, nor am I satisfied that the landlord had agreed to a deduction in this amount. Accordingly, I find that the tenant is responsible for the cost of the water delivery.

The landlord is also seeking a monetary order for losses related to cleaning/dumping and damages. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenant had caused damage and losses in the amounts claimed.

Residential Tenancy Regulation clarifies the requirements for how two opportunities for an inspection must be offered to the tenant:

Two opportunities for inspection

17 (1) *A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.*

(2) *If the tenant is not available at a time offered under subsection (1),*

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

As noted in Residential Policy Guideline #17:

The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

- the landlord does not offer the tenant at least two opportunities for inspection as required (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity); and/or*
- having made an inspection does not complete the condition inspection report.*

I must note, however, that the above does not exclude the landlord from being able to file a monetary claim for damages as noted in the policy guideline:

A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

- to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;*
- to file a claim against the deposit for any monies owing for other than damage to the rental unit;*
- to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and*
- to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.*

Accordingly, I will consider the landlord's monetary claims for damage and cleaning. In consideration of the landlord's claim for the gate damage, I note that Residential Tenancy Policy Guideline #1 clearly states that "The landlord is responsible for maintaining fences or other fixtures erected by him or her." I find this applies to the referenced gate in this application. I am not convinced that the tenant had willfully or

intentionally damaged this fence, nor am I convinced that the damage was due to any wrongdoing of the tenant. Accordingly, I find that the landlord must bear this cost, and therefore I dismiss this portion of the landlord's application without leave to reapply

In consideration of the landlord's claim for dumping and cleaning, I am satisfied that that the photographic and documentary evidence provided by the landlord supports that the tenant failed to leave the home in reasonably clean condition. I find that as a result of the tenant's failure to properly clean the home, the landlord was burdened with the task and cost of cleaning the home and dumping the abandoned items. I am not satisfied that the tenant had permission to leave the home in this condition. I find that the tenant failed to complete the required cleaning and dumping by the end of this tenancy as required by the *Act*, and accordingly, I allow this portion of the landlord's claim for cleaning and dumping.

Lastly, the landlord applied for reimbursement of photocopying and mailing costs. As the costs of filing or responding to an application for dispute resolution is not recoverable under the *Act* other than the filing fee, I dismiss these claims without leave to reapply.

I allow the landlord to recover the filing fee for this application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary awards.

Conclusion

I issue a Monetary Order in the amount of \$1,496.32 in the landlord's favour under the following terms:

Item	Amount
Unpaid Rent for December 2020	\$1,230.00
Unpaid Utilities – Water Bill	250.00
Dump Run	231.32
Cleaning	285.00
Filing fee	100.00
Less Security Deposit Held	-600.00
Total Monetary Order	\$1,496.32

The landlord is provided with this Order in the above terms and the tenant must be served with a copy of 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.

The remainder of the landlord's application is dismissed without leave to reapply.

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: October 12, 2021

Residential Tenancy Branch