



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 1:44 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord and the landlord's witness attended the hearing and were 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 landlord, the landlord's witness and I were the only ones who had called into this teleconference.

The landlord and the landlord's witness were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both the landlord and the landlord's witness testified that they are not recording this dispute resolution hearing.

The landlord confirmed her email address for service of this decision and order.

The landlord testified that she personally served the tenant with this application for dispute resolution and supporting evidence in April of 2021. The landlord's witness testified that he witnessed the landlord serve the tenant with the dispute resolution

materials on April 21, 2021. Based on the landlord and the witness's undisputed affirmed testimony, I find that the tenant was personally served with this application for dispute resolution and evidence on April 21, 2021, in accordance with sections 88 and 89 of the *Act*.

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 landlord, not all details of the landlord's submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on April 15, 2020 and ended on January 12, 2021. Monthly rent in the amount of \$1,850.00 was payable on the first day of each month. A security deposit of \$925.00 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 landlord testified that the tenant has not provided her with a forwarding address.

The landlord testified that in a Residential Tenancy Branch Decision dated January 4, 2021, she was granted an Order of Possession against the tenant for the tenant's failure to pay rent. The file numbers for the previous hearing were entered into evidence and are located on the cover page of this decision. The tenant applied for Review Consideration of the January 4, 2021 decision. The tenant's application for Review

Consideration was dismissed without leave to reapply. The Review Consideration Decision is dated January 7, 2021 and was submitted into evidence.

The landlord testified that she served the tenant with the Order of Possession, but he refused to move out and so she filed the Order of Possession with the Supreme Court of British Columbia and hired a bailiff to evict the tenant. The landlord entered into evidence the Supreme Court filing fee in the amount of \$120.00 which she is seeking to collect from the tenant. The landlord entered into evidence a bailiff receipt totalling \$157.50 which she is seeking to collect from the tenant.

The landlord testified that the bailiff instructed her to rent a storage locker which the bailiff would move the tenant's possessions into. The tenant testified that after the bailiff served the tenant with more documents pertaining to the eviction, the tenant moved out in the night before the bailiff could move the tenant's possession to the storage locker. The landlord testified that the storage locker cost her \$232.50 even though nothing was ever moved in. A receipt for same was entered into evidence which the landlord is seeking to collect from the tenant.

The landlord testified that the tenant left the subject rental property dirty and full of garbage. The landlord testified that she had to purchase extra garbage tags from the city to dispose of the tenant's garbage. A receipt for same in the amount of \$22.50 was entered into evidence which the landlord is seeking to collect from the tenant. The landlord entered into evidence a cleaning receipt for \$225.00 and two carpet cleaning receipts for \$168.00 and \$63.00. The landlord testified that the initial carpet cleaning cost \$168.00 and that the carpet cleaners had to come back to re-treat certain areas because the stains left by the tenant did not come out.

The landlord testified that the tenant did not pay rent for October 2020, December 2020 or rent for January 1-12, 2021. The landlord testified that she is seeking rent totalling \$4,416.13 from the tenant.

The landlord testified that she served the tenant with 10 Day Notices to End Tenancy in October and December of 2020 via registered mail. The landlord entered into evidence the registered mail receipts in the amount of \$11.36 each. The landlord testified that she is seeking the costs of the registered mail.

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*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$1,850.00 on the first day of each month. Based on the undisputed testimony of the landlord and the January 4, 2021 decision, I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlord rent as follows:

October 2020: **\$1,850.00**

December 2020: **\$1,850.00**

January 1-12, 2021: \$1,850.00 (rent) \ 31 (days in January) = \$59.68 (daily rate)

* 12 (days tenant resided in unit) = **\$716.16**

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.

I accept the landlord's undisputed testimony that the tenant was served with the Order of Possession and refused to move out. I find that the tenant's failure to comply with the January 4, 2021 decision resulted in the following calculable and proved losses to the landlord:

- Storage fee: \$232.50,
- Supreme Court filing fee: \$120.00, and
- Bailiff fee: \$157.50.

Had the tenant moved out in accordance with the January 4, 2021 decision, the tenant could not have had to file the Order of Possession with the Supreme Court of British Columbia, hire a bailiff or rent a storage locker for the tenant's possessions. I find that the landlord is entitled to a monetary award for all the above items totalling \$510.00, pursuant to section 67 of the *Act*. I find that the fact that the storage locker was not actually used to store the tenant's items to be inconsequential as the loss was still incurred by the landlord as a result of the tenant's non-compliance.

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I accept the landlord's undisputed testimony that the tenant left the subject rental property dirty and full of garbage at the end of this tenancy, contrary to section 37 of the *Act*.

I find that the landlord has proved the following losses resulted from the tenant's breach of section 37 of the *Act*:

- Garbage tags: \$22.50,
- Carpet cleaning: \$231.00, and
- Cleaning: \$225.00.

I award the landlord a Monetary award totalling \$478.50 for the above losses.

I decline to award the landlord the registered mail costs associated with serving the tenant with 10 Day Notices to End Tenancy for Unpaid Rent. I find these fees are costs are associated with the duties of a landlord and are not recoverable.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

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 \$925.00.

Conclusion

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

Item	Amount
Unpaid rent	\$4,416.16
Storage fee	\$232.50
Supreme Court filing fee	\$120.00
Bailiff fee	\$157.50
Garbage tags	\$22.50

Carpet cleaning	\$231.00
Cleaning	\$225.00
Filing fee	\$100.00
Less security deposit	-\$925.00
TOTAL	\$ 4,579.66

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: October 12, 2021

Residential Tenancy Branch