



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0684268 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL-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, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

An agent for the landlord (the "agent"), the landlord's property manager and the tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

The agent testified that the tenants were served with the landlord's application for dispute resolution and evidence via registered mail on June 9, 2021. The tenants testified that they received the above documents within five days of June 9, 2021. I find that the above documents were served on the tenants in accordance with sections 88 and 89 of the *Act*.

The agent did not dispute the tenants' service of evidence on the landlord. I find that the tenants' evidence was sufficiently served on the landlord for the purposes of this *Act*, pursuant to section 71 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, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenants' security and pet damage deposits, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in November 2020 and ended on May 15, 2021 pursuant to a Residential Tenancy Branch Settlement Decision dated March 22, 2021. The file numbers for the previous arbitration are located on the cover page of this decision. Monthly rent in the amount of \$4,380.00 was payable on the first day of each month. A security deposit of \$2,190.00 and a pet damage deposit of \$500.00 (the "deposits") were paid by the tenants to the landlord. The landlord has not returned any portion of the deposits to the tenants. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord applied for dispute resolution on May 25, 2021.

The landlord testified that the tenants owe a total of \$2,125.00 in unpaid rent and late fees for April and May 2021 rent. The landlord entered into evidence the following INTERAC E-transfers from tenant S.S.:

Date	Amount	Message from Tenant S.S. on E-transfer
April 3, 2021	\$2,200.00	Half rent for april
April 15, 2021	\$1,650.00	2 No payment of April rent 620 remaining dec/April late fee uncluded
May 1, 2021	\$730.00	2190 – 730 = 1460 left to pay for may + 620 still owing for April will send security from bc hydro to cover April. Still waiting for [tenant T.P.] to send her portion for May rent.

[messages reproduced as written]

The landlord testified that the tenant never paid the outstanding balance of April 2021's rent in the amount of \$620.00. Tenant S.S. testified that he paid the outstanding rent balance of \$620.00. Tenant T.P. testified that she thinks they paid the outstanding April rent. The tenants did not enter into evidence any documentary proof of rent paid to the landlord.

Both parties agree that the tenants did not pay all of May 2021's rent and that the tenants owe the landlord \$1,460.00 in unpaid rent from May 1-15, 2021.

Both parties agree that the landlord has charged the tenants a \$45.00 late fee for every late payment of rent. The tenants testified that this is illegal and that the landlord is only entitled to charge a \$25.00 late fee.

Both parties agree that they completed a joint move in condition inspection report at the start of the tenancy and a joint move out condition inspection report at the end of the tenancy. The move in and move out condition inspection reports were entered into evidence.

The tenants testified that they served the landlord with their forwarding address at the end of this tenancy via registered mail, email and text. No proof of the aforementioned service was entered into evidence. The agent testified that he did not know if the landlord was served with the tenants' forwarding address. The tenants testified that the landlord must have received the tenants' forwarding address because the landlord served them at that address.

The landlord testified that the tenants left the subject rental property dirty and that a cleaner was hired to clean the subject rental property. The landlord entered into

evidence cleaning quotes ranging from \$239.94 plus tax to \$420.00 plus tax. The agent testified that the landlord went with the lowest quote and is seeking \$265.00 from the tenant. The receipt for the cleaning was not entered into evidence. None of the quotes entered into evidence amount to \$265.00. The tenants testified that they left the subject rental property in a normal state.

Page one of the move out condition inspection report states:

- Fridge not empty or cleaned
- Oven very dirty needs cleaning

Tenant S.S.'s initial is directly below the above notation. Tenant S.S. testified that the landlord added the above notation after he initialled the move out condition inspection report. The agent disputed this. The agent testified that tenant S.S.'s initial is right under the notation and would otherwise be hanging in space and not in reference to anything.

The tenants entered into evidence videos of the subject rental property taken on May 15, 2021. The videos are fast and it is difficult to see the cleanliness of the subject rental property. It can be seen that the oven, walls and floors are dirty.

The agent entered into evidence a video of the subject rental property taken on May 18, 2021 which is slower and easier to determine the cleanliness of the property. In the video it can be seen that the floors, walls, windows and oven are dirty.

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 tenants were obligated to pay the monthly rent in the amount of \$4,380.00 on the first day of each month.

I find the testimony of the landlord regarding rental payments made to be more credible than the testimony of the tenants as the landlord's testimony is supported by the INTERAC E-transfers entered into evidence and the agent's testimony accords with the notes made by tenant S.S. on those INTERAC E-transfers. I find the tenants testimony regarding rental payments made to be unsupported by any documentary evidence.

Section 7(1)(d) of the *Residential Tenancy Regulation* (the “*Regulation*”) states that a landlord may charge subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent. Section 7(2) of the *Regulation* states that a landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

The tenancy agreement states:

The Tenant agrees to pay a \$45.00 administration fee if the rent is paid late.

Section 5 of the *Act* states:

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Pursuant to section 7(1)(d) of the *Regulation*, the landlord is not entitled to collect a late fee higher than \$25.00. I therefore find that only \$50.00 of the April 15, 2021 payment is owed for a late rent fee for December 2020 and April 2021.

Based on the INTERAC E-transfers and the agent's testimony, I find that the tenants paid \$2,200.00 towards April's rent on April 3, 2021. I find that the tenants paid \$1,650.00 on April 15, 2021 to be used as follows:

- \$25.00 for December 2020 and a late fee;
- \$25.00 April 2021 late fee; and
- \$1,600.00 for April 2021's rent.

I find that the tenants paid the landlord a total of \$3,800.00 (\$2,200.00 + \$1,600.00) towards April 2021's rent. Pursuant to section 26(1) of the *Act*, I find that the tenants owe \$580.00 (\$4,380.00 – \$3,800.00) in unpaid rent for April 2021.

Pursuant to the testimony of both parties, I find that the tenants owe \$1,460.00 in unpaid rent for May 1-15, 2021. I find that the landlord is entitled to late rent fee of \$25.00 for May 2021.

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.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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 one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

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.

The tenant alleged that the landlord added the notation on the move out condition inspection report after he initialed page 1. The agent testified that tenant S.S. initialed the notation after it was written. I find that the placement of tenant S.S.'s initial makes no sense if the notation was not present. I find, on a balance of probabilities, that the tenant initialed the notation on the move out condition inspection report after it was written.

Based on the move out condition inspection report and the videos entered into evidence by both parties, I find that the tenants did not leave the subject rental property reasonably clean as required by section 37(2)(a) of the *Act*.

The agent testified that a cleaner was hired which cost \$265.00. No receipt from a cleaner was entered into evidence. None of the quotes entered into evidence totaled \$265.00 even when taxes were added. I find that the agent has not proved the value of the loss suffered because it is not clear on what the \$265.00 claim is based.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I find that the landlord is entitled to nominal damages for cleaning as the landlord has proved that the tenants breached section 37(2) of the *Act*. In particular, the oven required significant remediation. I find that the landlord is entitled to nominal damage for cleaning in the amount of \$100.00.

Section 38(1) of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find, on a balance of probabilities, that the tenants served the landlord with their forwarding address by May 25, 2021, the date the landlord applied for dispute resolution, because the tenants were served at their forwarding address.

I find that the landlord made an application for dispute resolution claiming against the security deposit within 15 days of the end of this tenancy, pursuant to section 38(1)(a) of the *Act*.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants, 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 \$2,265.00 of the tenants' deposits, comprised as follows:

- April rent: \$580.00

- May rent: \$1,460.00
- May late fee: \$25.00
- Nominal damages for cleaning: \$100.00
- Filing fee: \$100.00

I order the landlord to return the remaining \$425.00 of the tenants' deposits to the tenants.

Conclusion

The landlord is authorized to retain \$2,265.00 from the tenants' deposits.

I order the landlord to return \$425.00 of the tenants' deposits to the tenants.

I issue a Monetary Order to the tenants in the amount of \$425.00.

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: November 23, 2021

Residential Tenancy Branch