



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCL-S, MNRL-S, MNDL-S, FFL**

Introduction

This hearing 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*;
- 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.

The landlord attended the hearing through the agent RR ("the landlord") and had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenants ("the tenant") did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 14 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.

Service by Landlord

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 May 7, 2021 and deemed received by the tenant under section 90 of the *Act* five days later, that is, on May 12, 2021. The landlord provided the Canada Post Tracking Number in support of service.

The landlord testified they had received the tenant's forwarding address by email on April 26, 2021 and sent the registered mail to that address. The landlord testified that the parties communicated by email at addresses routinely used by them during the tenancy. The landlord testified the tenant acknowledged receipt of the Application for Dispute Resolution and documents in subsequent emails.

In May 2018, the landlord testified that the tenant agreed with the landlord that they owed the landlord \$6,575.00 for outstanding rent and damages. The landlord testified that the tenant instructed the landlord to apply the security deposit to the amount owing and the parties agreed to a repayment plan. The tenant began repayment of the amount of \$6,575.00. The tenant paid \$3,000.00 (\$1,000.00 monthly for May, June and July 2021) as agreed and then stopped paying. The landlord testified the balance owing is \$2,650.00.

The landlord testified the tenant phoned the landlord the week before the hearing, confirmed the hearing date/time, and requested rescheduling, which the landlord denied.

I have considered the landlord's testimony and evidence. Because the tenant confirmed receipt of the Notice of Hearing and Application for Dispute Resolution, I find that the landlord's application and evidence was sufficiently served pursuant to section 71(2)(c) of the *Act* May 12, 2021.

Issue(s) to be Decided

Is the landlord entitled to 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*;

- 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.

Background and Evidence

The landlord provided uncontradicted evidence as the tenant did not attend the hearing.

The landlord stated that the month-to-month tenancy commenced on November 1, 2020. The landlord stated that rent in the amount of \$1,850.00 was due on the first day of each month and that a security deposit in the amount of \$925.00 was paid, which was applied to the landlord's claim as set out earlier. The landlord submitted a copy of the agreement.

The landlord stated that the tenant suddenly vacated the unit on April 23, 2021 without notice and without providing a forwarding address.

The landlord testified they had received the tenant's forwarding address by email on April 26, 2021. In May 2021, the landlord testified that the tenant agreed with the landlord's accounting department to begin repayment of the amount of \$6,575.00 for outstanding rent and damages to the unit and to apply the security deposit to the amount owing the landlord.

The landlord testified that the tenant paid \$3,000.00 (\$1,000.00 monthly for May, June, and July 2021) and then stopped making the agreed upon payments. The landlord testified the balance owing is \$2,650.00. The landlord requested a Monetary Order in this amount.

The landlord stated that a condition inspection report was conducted on moving in and signed by both parties; a copy was submitted in evidence. As stated, the tenant moved out without notice on April 23, 2021. The landlord conducted an inspection alone after the tenant vacated as the landlord did not know where the tenant had moved or their forwarding address. The inspection report as signed by the landlord alone was submitted as evidence.

The landlord testified that damage to the unit was observed after the tenant moved out and the unit needed cleaning and repairs, observations which are reflected in the report and in submitted photographs.

During the hearing, the landlord clarified the expenses claimed as follows:

ITEM	AMOUNT
Balance of rent and damages owed as agreed by parties	\$2,650.00
Application fee	\$100.00
TOTAL CLAIM	\$2,750.00

The landlord applied for Dispute Resolution on May 7, 2021 within 15 days of receiving the tenant's forwarding address.

The landlord requested a Monetary Order of **\$2,750.00**.

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations, or a tenancy agreement.

Section 7(1) of the Act provided that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

1. The claimant must prove the existence of the damage or loss.

2. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.
3. Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.
4. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award. The landlord provided believable testimony supported in all material aspects by well-organized and comprehensive documents,

I have considered all the evidence submitted by the landlord, including the photographs showing the unit needed cleaning and repairs, and the condition inspection report on moving in (signed by tenant) and moving out (not signed by tenant). I find the landlord's evidence credible and reliable in all aspects. The landlord's testimony was supported in all aspects by documentary evidence.

I accept the landlord's testimony that the tenant vacated the unit without notice and that they left without paying outstanding rent. I find the landlord has met the burden of proof on a balance of probabilities with respect to all aspects of the landlord's claim including that the amount claimed in outstanding rent and damages. I accept the landlord's testimony that the tenant agreed to repay the outstanding rent and damages, made some payment, and the balance claimed remains owing.

Considering the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the unit needed repairs and cleaning when the tenant vacated. I find the tenant is responsible for the damage, the landlord incurred expenses for repairs as claimed, the amounts are reasonable and supported by the evidence, and the landlord took all reasonable steps to mitigate expenses. I find the damage is more than 'reasonable wear and tear'.

I find the tenant owes the landlord the amount claimed for the balance agreed upon by the parties.

I find the landlord is entitled to a monetary award in the amount requested. As the landlord has been successful in this matter, I award the landlord reimbursement of the filing fee in the amount of \$100.00.

I grant an award to the landlord in the amount of **\$2,750.00**. My award to the landlord is summarized as follows:

ITEM	AMOUNT
Balance of rent and damages owed	\$2,650.00
Application fee	\$100.00
TOTAL Monetary Order	\$2,750.00

The landlord is entitled to a Monetary Order in the amount of **\$2,750.00**.

Conclusion

The landlord is entitled to a Monetary Order in the amount of **\$2,750.00**.

This Order must be served on the tenants. If the tenants fail to comply with this Order the landlord may be filed 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: November 04, 2021

Residential Tenancy Branch