



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD MNR FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held by teleconference. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent, utilities, damage to the unit and for damage or loss under the Act;
- authorization to retain all or a portion of the Tenant's security deposit in satisfaction of the monetary order requested pursuant to section 38; and,
- to recover the cost of the filing fee.

The Landlord attended the hearing with her agent, collectively referred to as the Landlord. The Tenant did not attend the hearing. The Landlord confirmed that the Tenant was served, in person, with the hearing documents, and all evidence on October 15, 2021. The Landlord provided a signed proof of service document. I find the Tenant was sufficiently served with all documentation on October 15, 2021, the same day it was given to him in person.

The Landlord was provided the 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to compensation for unpaid rent, utilities, damage to the unit and for damage or loss under the Act?
- Is the Landlord entitled to recover the cost of the filing fee?
- Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in satisfaction of the monetary order requested?

Background and Evidence

The Landlord provided a copy of the tenancy agreement into evidence, which shows that monthly rent was set at \$2,300.00, and was due on the first of the month. The Landlord currently holds a security deposit, in the amount of \$1,150.00. Utilities were not included in rent, and this rental unit was a self contained townhouse with its own utility connections.

The Landlord provided a series of monetary worksheets which lay out the following items:

- 1) \$10,200.00 – Unpaid Rent April 2020 – December 2020
- 2) \$539.00 – Fortis BC Bills February 2020 – December 2020
- 3) \$721.00 – City of Penticton Electrical Bills – February 2020 – December 2020

The Landlord stated that the Tenant only made partial payments throughout 2020, as laid out on the worksheet. The Landlord is seeking to recover the unpaid balance of those months, totalling \$10,200.00. The Landlord noted that they already have a monetary order for September 2020 rent, so this amount has not been included in the above total. The Landlord stated that the Tenant moved out, suddenly, on December 14, 2020, and left the rental unit in disrepair.

The Landlord explained that the Tenant stopped paying his utilities in February 2020, until he vacated on December 14, 2020. The Landlord stated that the tenancy agreement specifies that the Tenant is liable for all utilities, and he failed to pay both his electricity and gas bills from February 2020 – December 2020. The bills were all provided into evidence for this period.

- 4) \$1,900.00 – Representation fees

The Landlord explained that she hired an agent to assist her in dealing with this problematic tenancy, and the above noted amount is what she paid to hire

representation to help her. The Landlord provided copies of receipts and invoices for this amount.

- 5) \$107.65 – Food and Gas - Trip to Penticton to Serve the 10 Day Notice
- 6) \$113.50 – Wear, Tear, and Mileage – Trip to Penticton to serve 10 Day Notice
- 7) \$60.00 – Costs to serve RTB orders on the Tenant in December 2020
- 8) \$61.00 – Gas – Trip to Penticton at end of tenancy
- 9) \$113.50 – Wear, Tear, and Mileage – Trip to Penticton at the end of the tenancy
- 10) \$105.88 – Food – Food costs for trip to Penticton at the end of tenancy

The Landlord explained that these above costs were associated with having to drive from the home city of Langley, to Penticton, on two separate occasions so that they could attend to issues with this rental unit (to issue the 10 Day Notice, and at the end of the tenancy). The Landlord provided receipts and itemization of how these amounts were calculated.

- 11) \$400.00 – Cleaning fees

The Landlord explained that the Tenant vacated the rental unit around December 14, 2020, but he left behind a significant mess, which required multiple trips to the dump to dispose of furniture and garbage. The Landlord also explained that they hired a professional cleaner to help wipe the walls, clean appliances, floors, and cabinets. The Landlord provided a copy of the cleaning invoice into evidence to show that they paid the above noted amount for 20 hours of cleaning over a 2-day period. No photos were provided.

- 12) \$44.63 – Broken Gate Handle

The Landlord explained that the Tenant broke the handle on the gate, which required replacement at the end of the tenancy. The Landlord provided copies of the receipt for this item.

- 13) \$106.45 – Locksmith

The Landlord explained that although the Tenant left the keys when he moved out, they did not trust him, so they hired a locksmith to change the locks after he moved out. The Landlords provided a copy of the receipt for this item.

- 14) \$2,000.00 – Loss of Quiet Enjoyment (\$1,000.00 for each of the Landlords)

The Landlord stated that both her and her husband spent a great deal of time, effort, expense, and energy on this tenancy, which resulted in significant stress. The Landlord is seeking \$1000.00 for both her and her husband for their loss of quiet enjoyment in general.

Analysis

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 in sections 7 and 67 of the *Act*.

Based on all of the above, the undisputed evidence and testimony, and on a balance of probabilities, I make the following findings. I will address the items claimed in the same order as laid out above.

- 1) \$10,200.00 – Unpaid Rent April 2020 – December 2020
- 2) \$539.00 – Fortis BC Bills February 2020 – December 2020
- 3) \$721.00 – City of Penticton Electrical Bills – February 2020 – December 2020

I note the tenancy agreement clearly specifies that the above noted utilities are not included in rent and the Landlord provided copies of the relevant bills. I find the Tenant is liable for these amounts. I also accept the undisputed testimony and evidence that the Tenant failed to pay the above noted rent throughout 2020. I find the Tenant is liable for all of these amounts, in full, totalling \$11,460.00.

- 4) \$1,900.00 – Representation fees
- 5) \$107.65 – Food and Gas - Trip to Penticton to Serve the 10 Day Notice
- 6) \$113.50 – Wear, Tear, and Mileage – Trip to Penticton to serve 10 Day Notice
- 7) \$60.00 – Costs to serve RTB orders on the Tenant in December 2020
- 8) \$61.00 – Gas – Trip to Penticton at end of tenancy
- 9) \$113.50 – Wear, Tear, and Mileage – Trip to Penticton at the end of the tenancy
- 10) \$105.88 – Food – Food costs for trip to Penticton at the end of tenancy

I accept that the Landlord chose to hire “representation” to assist with tenancy related matters. However, the Landlord chose to hire representation, rather than manage these matters herself, and I find this was a personal decision, not an amount that the Tenant is liable for. Further, with respect to the expenses that were incurred on items #5-#10 above, I do not find these are expenses that the Tenant is liable for, as these are

expenses incurred, largely due to the Landlord's choice to own a property in a different geographic area. I dismiss the above noted items, in full.

11)\$400.00 – Cleaning fees

With respect to the cleaning fees, I accept the undisputed testimony that the Tenant left behind debris, furniture, and garbage. I also accept that the Tenant failed to do any cleaning before he left, and significant effort was required to remediate the unit, such that it could be re-rented. I note the Landlord provided a receipt for this item, and based on the explanation of the condition of the rental unit, I find this amount is reasonable. I note the Tenant is required to leave the rental unit "reasonably clean", which does not appear to have been done. I award this item, in full.

12)\$44.63 – Broken Gate Handle

I accept the undisputed testimony that the Tenant broke the gate handle while he was living at the unit and that it was functioning properly at the start of the tenancy. I note a receipt was provided for this item. I find the Tenant is liable for this item, in full.

13)\$106.45 – Locksmith

I note that, at the end of the tenancy, a Tenant is required to return all keys to the Landlord, pursuant to section 37(2)(b). If the Tenant fails to do this, then they may be liable for changing the locks or the keys. However, in this case, the Landlord stated the Tenant returned the keys. I find there is insufficient evidence to support why the Tenant would be liable for this item, given he returned the keys when he moved out. I dismiss this item, in full.

14)\$2,000.00 – Loss of Quiet Enjoyment (\$1,000.00 for each of the Landlords)

I note section 28 of the Act speaks to the protection of a Tenant's right to quiet enjoyment. However, the Act does not speak to a Landlord's right to quiet enjoyment. I accept the Landlord endured stress and some amount of conflict as a result of this tenancy, particularly at the end of the tenancy. However, I do not find the Landlord is entitled to compensation for loss of quiet enjoyment, as this is a section of the Act, designed to ensure Tenants have use of their rental unit, free from substantial interference. I dismiss these items in full.

Further, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was substantially successful with her application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount owed by the Tenant. In summary, I grant the monetary order based on the following:

Claim	Amount
Total of items awarded above	\$11,904.63
Filing fee	\$100.00
Less: Security and pet Deposit currently held by Landlord	(\$1,150.00)
TOTAL:	\$10,854.63

Conclusion

The Landlord is granted a monetary order in the amount of **\$10,854.63**, as specified above. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and 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 10, 2021

Residential Tenancy Branch