



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDL-S, MNDCL, FFL

Introduction

The landlord seeks compensation pursuant to sections 26 and 67 of the *Residential Tenancy Act* ("Act"). In addition, they applied to recover the cost of the filing fee, pursuant to section 72 of the Act.

Preliminary Issue: Service

The landlord attended the hearing, but the tenant did not. In such cases where a respondent does not attend, I must be satisfied that the respondent was properly served with the Notice of Dispute Resolution Proceeding. Such service must comply with the Act and the Residential Tenancy Branch's *Rules of Procedure*, and there must be evidence to support a finding that such service in fact occurred.

The landlord testified, under oath, that she served the Notice of Dispute Resolution Proceeding by registered mail, which is a permitted method of service under section 89 of the Act. The landlord further testified that the Notice of Dispute Resolution Proceeding package was mailed within the week of receiving the Notice of Dispute Resolution Proceeding from the Residential Tenancy Branch on August 27, 2021.

Given the undisputed, sworn evidence before me, it is therefore my finding that the tenant was appropriately served with the Notice of Dispute Resolution Proceeding and documentary evidence necessary for them to participate fully in these proceedings.

Issue

Is the landlord entitled to compensation?

Background and Evidence

The tenancy began on May 14, 2018 and ended on April 29, 2021. The tenancy was initially a fixed-term tenancy which became a month-to-month tenancy after May 30, 2019. Monthly rent was \$1,650.00 and the tenant paid a security deposit of \$825.00, which the landlord currently holds in trust. A copy of the written tenancy agreement was in evidence. The tenant did not provide a forwarding address to the landlord.

The landlord seeks the following compensation:

1.	Unpaid rent for April 2021	\$1,650.00
2.	Cleaning costs	535.50
3.	Various repairs	525.00
4.	Repair – front door handle	84.00
5.	Repair – loose bathtub handle	68.25
6.	Junk removal cost	241.50
7.	Coordination fee	500.00
8.	Repair – gas cooktop repair	400.00
9.	Loss of rent for May 2021	1,650.00
10.	Application filing fee	100.00

The landlord submitted a number of photographs of the interior of the rental unit which showed the state and condition of the property, including photographs which depicted the specific repairs that were required. The landlord testified that they completed a Condition Inspection Report (which did not appear to be submitted into evidence) and that the tenant caused the state and condition of the rental unit to be such that it required cleaning, clearing, and repairing. Invoices for the cleaning, various repairs, and for junk removal were in evidence.

The landlord gave evidence that the “coordination fee” was an expense to have her property manager take care of – that is, to coordinate – all of the repairs and cleaning necessary for a new tenant to be found. An invoice for this amount is in evidence.

The tenant gave notice to end the tenancy on March 18, 2021 and did not pay rent for April 2021. This amount of unpaid rent is being claimed. A copy of a WeChat text conversation was in evidence which shows the tenant telling the landlord, “I’m moving to a new school. I don’t think I’ll be able to rent next month. 🙏”

Last, the landlord testified that due to the number of repairs, cleaning, and so forth that were necessary after the tenant vacated the rental, she was unable to rent out the rental unit to a new tenant until June 2021. She claims \$1,650.00 for a loss of rent for May 2021. A copy of the tenancy agreement for the new tenant was in evidence.

Analysis

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.

1. Claim for Rent and Loss of Rent

A tenant must pay rent when it is due. (See section 26 of the Act.) In this case, the tenant prematurely ended the tenancy on March 18, 2021 which, pursuant to the Act, cannot have been earlier than April 30, 2021. Thus, the tenant was legally obligated to pay rent for April. The landlord is therefore awarded this claim for compensation in the amount of \$1,650.00.

Section 37(2) of the Act requires a tenant to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, when they vacate.

In this case, the evidence persuades me on a balance of probabilities that the tenant did not leave the rental unit reasonably clean and undamaged except for reasonable and tear. As such, the tenant created a situation whereby the landlord was unable to have a new tenant take occupancy until after the repairs, cleaning and so forth were completed in time. Given these facts, it is my finding that the tenant is liable to compensate the landlord for the loss of rent for May in the amount of \$1,650.00.

2. Claim for Repairs

As I have found, the tenant breached section 37(2) of the Act and is therefore liable for all the expenses and costs borne by the landlord in repairing and cleaning the rental unit. The expenses were, I find, both reasonable and necessary in the circumstances. The landlord is thus entitled to compensation in the amount of \$1,854.25.

3. Claim for Coordination Fee

Regarding this particular claim, the fee would not likely have occurred had the tenant not breached section 37(2) of the Act. However, I am nonetheless required to consider and apply subsection 7(2) of the Act which states that (emphasis added)

A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

For this claim, it is my finding that the property manager fee was paid for a service that made it more convenient for the landlord to coordinate the repairs and so forth. But I am not satisfied that it was a *necessary* fee for an activity that the landlord could not have done herself. In other words, the landlord could, in my opinion, have taken the reasonable step to minimize her loss of \$500.00 by doing these activities herself.

For this reason, I am unable to award compensation for the \$500.00 coordination fee.

4. Claim for Application Filing Fee

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord succeeded, for the most part (with the exception of the coordination fee claim) in her application, I grant her \$100.00 in compensation to pay for the cost of the application filing fee.

Summary

A total of \$5,254.25 in compensation is awarded to the landlord.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I order that the landlord may retain the tenant’s security deposit of \$825.00 in partial satisfaction of the above-noted award.

The landlord is granted a monetary order in the amount of \$4,429.25. A copy of this monetary is issued to the landlord, in conjunction with this decision. The landlord must serve a copy of this order on the tenant.

Conclusion

The application is granted.

The landlord is hereby granted a monetary order in the amount of \$4,429.25, which must be served on the tenant. If the tenant fails to pay the landlord the amount owed within 15 days of receiving a copy of this decision and the order, the landlord may file and enforce the order in the Provincial Court of British Columbia.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal the decision is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: February 25, 2022

Residential Tenancy Branch