



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Parties	File No.	Codes:
Tenants, T.W. and T.C.	310058290	CNR, RP, LRE, LAT, OLC, FFT
Landlord, L.C.	310059440	OPR, MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenants applied for the following claims:

- an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated December 15, 2021 ("10 Day Notice");
- an Order for repairs to the unit or property, having contacted the Landlord in writing to make repairs, but they have not been completed;
- to suspend or restrict the Landlord's right to enter;
- for authorization for the Tenants to change the lock;
- an Order for the Landlord to Comply with the Act or tenancy agreement; and
- to recover their \$100.00 Application filing fee.

The Landlord applied for following claims:

- an order of possession for unpaid rent, further to having served the Tenants with the 10 Day Notice;
- \$4,270.00 compensation unpaid rent;
- Compensation for monetary loss or other money owed, holding the security deposit and pet damage deposits for these claims; and
- recovery of her \$100.00 application filing fee.

However, the Landlord confirmed that the Tenants moved out of the rental unit on

approximately February 15, 2022, without having given proper notice or their forwarding address. As such, the Landlord confirmed that she no longer seeks an order of possession, but solely compensation for the monetary claims.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenants. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave her an opportunity to ask questions about it. During the hearing, the Landlord was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenants did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that she served the Tenants with her Notice of Hearing documents and evidence by Canada Post registered mail, sent on February 10, 2022. The Landlord provided a Canada Post tracking numbers as evidence of service. I find that the Tenants were deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenants.

Further, the Tenants had applied for dispute resolution, and were provided with a copy of their Notice of a Dispute Resolution Hearing on December 29, 2021; however, the Tenants did not attend the teleconference hearing scheduled for Monday, April 1, 2022 at 1:30 p.m. (Pacific Time). The phone line remained open for 24 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that she was ready to proceed.

Preliminary and Procedural Matters

The Parties provided their email addresses in their respective Applications, and the Landlord confirmed her address in the hearing. She also confirmed her understanding

that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Landlord that she is not allowed to record the hearing and that anyone who was recording it was required to stop immediately. The Landlord affirmed that she was not recording it.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

In the hearing, the Landlord confirmed the details of the tenancy from the tenancy agreement, saying that the fixed-term tenancy began on November 15, 2020, ran to May 31, 2021, and then operated on a periodic or month-to-month basis. The Landlord confirmed that the Tenants owed her a monthly rent of \$1,850.00, due on the first day of each month. She said that the Tenants paid her a security deposit of \$925.00, and a \$925.00 pet damage deposit. The Landlord said that she holds these deposits for her claims, and because the Tenants did not give her a forwarding address when they moved out on approximately February 15, 2022.

The Landlord said that the Tenants owed her \$570.00 in unpaid rent from 2021, and she said that they failed to pay her any rent for January or February 2022. The Landlord said that she seeks recovery of unpaid rent from the Tenants.

The Landlord also said that the Tenants had broken a window in the kitchen, and they said they would repair it; however, the Landlord said that they never fixed the window. The Landlord said that she had someone quote her what the repair would cost, but that she has not had it fixed yet. The Landlord submitted a photograph of the broken window in front of the kitchen sink. The Landlord did not submit a copy of the estimate that she said came to \$1,042.43.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

In terms of the Landlord's claim for compensation for her broken window, I find that she applied for this before being eligible to do so, as the window has not yet been repaired. Further, the Landlord did not submit a copy of the estimate for my consideration in this matter. As such, I dismiss this claim without leave to reapply, pursuant to section 62..

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." There is no evidence before me that the Tenants had a right to deduct any portion of their rent from the monthly amount due to the Landlord.

Section 46 of the Act states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Section 46 also states that the 10 Day Notice must comply with section 52, as to form and content.

Based on the evidence before me, I find that the Landlord is successful in her Application for monetary compensation for this tenancy. I find that the Tenants breached section 26 of the Act by not paying \$570.00 owing from December 2021, and for not paying \$1,850.00 in rent for each of January and February 2022. Accordingly, I grant the Landlord a monetary award of **\$4,270.00** in unpaid rent, pursuant to section 67 of the Act. Given her success, I also award the Landlord recovery of the **\$100.00** Application filing fee from the Tenants, pursuant to section 72 of the Act.

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenants' security and pet damage deposits in partial satisfaction of the Landlord's monetary awards. The Landlord is authorized to retain the Tenants' \$925.00 security and \$925.00 pet damage deposits, in partial satisfaction of this award. That leaves the Tenants owing the Landlord **\$2,520.00** in unpaid rent.

I grant the Landlord a Monetary Order of **\$2,520.00** from the Tenants pursuant to section 67 of the Act.

Conclusion

The Landlord's Application for recovery of unpaid rent is successful in the amount of **\$4,270.00**. Further, the Landlord is awarded recovery of the **\$100.00** filing fee for this Application from the Tenants for a total of **\$4,370.00**.

The Landlord is authorized to retain the Tenants' **\$925.00** security and **\$925.00** pet damage deposits in partial satisfaction of the Landlord's monetary awards.

I grant the Landlord a **Monetary Order** under section 67 of the Act from the Tenants in the amount of **\$2,520.00** for the remainder of the monetary award owed by the Tenants to the Landlord.

This Order must be served on the Tenants by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: April 01, 2022

Residential Tenancy Branch