



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDL, MNDCL, FFL

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, made on July 27, 2021 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent;
- a monetary order for damage, compensation, or loss; and
- an order granting recovery of the filing fee.

The Landlords and the Tenants attended the original hearing on February 10, 2022. At the start of the original hearing, the Tenants stated that they had not received the Landlords' documentary evidence. It was discussed and decided that the original hearing would be adjourned to allow the Landlords to re-serve the Tenants with their documentary evidence, and to provide the Tenants with an opportunity to respond. During the original hearing, the parties confirmed their emails as being an effective form of service.

The hearing reconvened on May 9, 2022 at 11:00AM. Only the Landlords attended the reconvened hearing at the appointed date and time. No one appeared for the Tenants. The conference call line remained open and was monitored for 45 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Reconvened Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlords and I were the only persons who had called into this teleconference.

The Landlord confirmed that they had emailed their documentary evidence to the email provided by the Tenants during the original hearing. The Landlords provided a copy of the email sent to the Tenants on February 16, 2022 and again on February 28, 2022. I

find that the Landlords' documentary evidence was sufficiently served to the Tenants pursuant to Section 71 of the *Act*, and deemed to have been received by the Tenants on February 19, 2022. I note that the Tenants submitted some documentary evidence to the Residential Tenancy Branch on May 2, 2022, however, no one attended the hearing for the Tenants to present the evidence for my consideration.

The Landlords were provided with a full 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to a monetary order for damage, compensation, or loss, pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
3. Are the Landlords entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlords stated the following: that the tenancy began on April 29, 2019. During the tenancy, the Tenants were required to pay rent in the amount of \$1,650.00 to the Landlords on the first day of each month. The Tenants did not pay a security deposit. The Tenants vacated the rental unit on November 13, 2020. The Landlords provided a copy of the tenancy agreement in support.

The Landlords are claiming \$1,650.00 relating to unpaid rent for November 2020. The Landlords stated that the Tenants failed to pay rent when due for November 2020 before vacating the rental unit, without notice on November 13, 2020. The Landlords stated that they sent the Tenants an email requesting that the rent be paid, at which point the Tenants replied and indicated that they would not be paying them. The Landlords provided a copy of the email exchange in support.

The Landlords are also claiming for damages and compensation relating to repairs and cleaning which were required to remediate the rental unit following the end of the tenancy in the amount of \$16,923.08.

The Landlords stated that they noticed the rental unit and surrounding property was becoming cluttered and unsightly. The Landlords stated that the Tenants had an accumulation of derelict vehicles, garbage, and a chicken coop in the yard, as well as items such as a wood stove buried under ground. The Landlords stated that they attempted to generate a plan with the Tenants to assist in cleaning the rental property, however, the Tenants seemed disinterested and stopped responding to the Landlords. Instead, the Landlords stated the Tenants vacated the rental unit without notice leave behind a tremendous amount of damage, garbage, and cleaning at the rental property.

The Landlords stated that the rental unit was in good condition at the start of the tenancy. The Landlords referred to videos that they had taken of the rental unit just prior to the start of the tenancy, compared to pictures of the rental unit at the end of the tenancy which were all submitted by the Landlord in their evidence.

The Landlords stated all surfaces throughout the rental unit were damaged, stained, or dirty. The Landlords stated that the entire rental unit required repainting. The Landlords stated that the Tenants had removed the stove, washer, and dryer from the rental unit, leaving the appliances outside which were they began to rust and required replacement.

The Landlords stated that the Tenants had removed the countertop and backsplash in the kitchen, as well as a bathroom vanity. The Landlords stated that the Tenants had attempted to reconfigure some plumbing in the bathroom which was installed incorrectly. The Landlords stated that the Tenants had painted a large mural on the ceiling and removed all the hardware and outlet covers throughout the rental unit.

The Landlords stated that the Tenants had taken out a bedroom closet and replaced it with an odd-looking closet. The Landlords stated that the Tenant removed all light fixtures and had replaced them with other fixtures that were incorrectly installed and hanging loosely. The Landlord's stated that there were missing kitchen cabinet doors which had been used to construct the chicken coop.

The Landlords stated that they were required to remove 15 truck loads of garbage from inside and outside of the rental unit. The Landlords stated that they required the use of an excavator to dig up garbage that had been buried and may be contaminating the well water located nearby. The Landlords stated that there was broken glass, dead chickens, and rotting eggs found around the property.

The Landlords stated that they worked as fast as they could to repair and clean the rental property to ensure it was suitable for occupancy. The Landlords stated that it took

them part of November, December 2020, and January 2021 to return the rental unit and property to its original condition and to re-rent the rental unit as of February 2021. As such, the Landlords are seeking compensation in the amount of \$3,300.00 for the loss of rent for December 2020 and January 2021.

The Landlords provided an extensive list of materials and consumables purchased to repair and clean the rental unit in the amount of \$4,870.08, as well as labour costs associated with doing so in the amount of \$8,753.00. The Landlords provided receipts in support of these costs.

Lastly, the Landlords are claiming \$257.25 in relation to bailiff costs associated with tracking the Tenants following the end of the tenancy as the Tenants had not provided the Landlords with their forwarding address. The Landlords provided a receipt in support. If successful, the Landlords are also claiming for the return of the \$100.00 filing fee. No one appeared for the Tenants to dispute the Landlords' claims.

Analysis

Based on the uncontested affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlords to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or

tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlords did what was reasonable to minimize the damage or losses that were incurred.

Section 26(1) of the *Act* confirms: A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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. I accept that the Tenants did not pay rent to the Landlords for November 2020 prior to them ending their tenancy. I find that the Tenants breached Section 26 of the Act, and therefore, the Landlords are entitled to recover the loss of rent for November 2020 in the amount of **\$1,650.00**.

Section 37(2) When a tenant vacates a rental unit, the tenant must;

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

In this case, I find that the Landlords have provided a preponderance of evidence showing the condition of the rental unit at the start of the tenancy as being in good condition. I find that the Landlords have provided sufficient evidence to demonstrate that the Tenants left the rental unit and surrounding property in a deplorable condition. I am satisfied that the Landlords were required to conduct extensive repairs and cleaning to the rental unit and surrounding property as a result of the Tenants' neglect and/or willful actions of destruction.

I am satisfied that the Landlords incurred a significant loss as a result of having to repair and clean the rental unit to a state that is suitable for occupancy. I find that the Landlords have supported the amounts that they are claiming with receipts and photographic evidence showing the need for such repairs and cleaning. Lastly, I find that the Landlords made every attempt to mitigate their loss by finding the most cost effective way to repair and clean the rental unit and surrounding property.

As such, I find that the Landlords are entitled to the full amount of compensation that they are seeking relating to repairs and cleaning as follows:

The Landlords are entitled to compensation in the amount of **\$4,870.08** for materials and consumables purchased to repair and clean the rental unit and property.

The Landlords are entitled to compensation in the amount of **\$8,753.00** to cover labour costs associated with repairs and cleaning the rental unit and property.

The Landlords are entitled to compensation in the amount of **\$3,300.00** for loss of rental income while the repairs and cleaning were taking place during December 2020 and January 2021.

With respect to the Landlords' claim for the bailiff service used to track the Tenants following the end of tenancy, I find that this was not necessary given the Landlords could have submitted an Application for Substituted Service to seeking permission to serve the Tenants via email. As such, I dismiss the Landlord's claim without leave to reapply.

Having been partially successful, I find that the Landlord as entitled to recover the **\$100.00** filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I find the Landlords are entitled to a monetary order in the amount of \$18,673.08.

Conclusion

The Landlords have established an entitlement to monetary compensation and have been provided with a monetary order in the amount of **\$18,673.08**. The order should be served to the Tenants as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: May 25, 2022

Residential Tenancy Branch