



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL, MNDCL, 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 recover the filing fee for this application pursuant to section 72.

BJ, agent, attended for the landlord ("the landlord"). The landlord had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

1. Attendance of Tenant

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 11 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.

2. Recording

The persons attending were cautioned that recordings of the hearing were not permitted pursuant to Rule 6.11 of the *Residential Tenancy Branch Rules*. They confirmed their understanding of the requirement and further confirmed they were not making recordings of the hearing.

3. *Delivery of Decision*

The landlord confirmed their email address to which a copy of the Decision and any Order will be sent.

4. *Service of Documents*

As the tenant did not attend the hearing, the landlord provided affirmed testimony that the landlord served each tenant separately with the Notice of Hearing and Application for Dispute Resolution by registered mail sent to the residential address for each tenant on December 7, 2021 and deemed received under section 90 of the *Act* five days later, that is, on December 12, 2021.

The landlord testified the tenant moved out without providing a forwarding address. The landlord hired a skip tracing company who located the tenant and provided their residential address at a unit where they lived together.

The landlord provided the Canada Post Tracking Numbers and a copy of each receipt in support of service. Further to the landlord's testimony and supporting documents, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution on December 12, 2021, pursuant to sections 89 and 90.

5. *Security deposit*

The landlord requested an amendment to the landlord's application to request that the landlord be authorized to apply the security deposit of \$1,100.00 held by the landlord to any monetary award granted pursuant to section 72.

The landlord testified the tenant paid the landlord a security deposit in this amount at the start of the tenancy which the landlord holds. The tenant has not given the landlord permission to apply the security deposit to outstanding rent.

Section 4.2 of the Rules of Procedure provides that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated.

I find the tenant could reasonably anticipate the landlord's claim would be amended to include a request authorizing the landlord to apply the security deposit to a monetary award for outstanding rent. The amendment would not be prejudicial to the respondent.

Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's applications to allow the landlord to request that the security deposit be applied to any monetary award.

Issues:

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.

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Background

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

The landlord submitted a copy of the tenancy agreement and provided the following details about the background of the tenancy:

ITEM	DETAILS
Type of tenancy	Monthly
Date of beginning	September 15, 2017
Date of ending	April 30, 2020
Monthly rent payable on 1 st	\$2,398.50

Security deposit	\$1,100.00
Date of application	December 2, 2021
Forwarding Address	Not provided

A condition inspection was conducted on moving in. The landlord testified that the unit was in good condition in all relevant aspects. A copy of the report was not submitted.

The tenant vacated the unit on April 30, 2020, without providing notice. The tenant did not pay rent for the last two months of the tenancy, March and April 2020, for which the landlord requested compensation.

The landlord testified that damage to the unit was observed after the tenant moved out and the unit needed cleaning and repairs.

The tenant put a stop payment on a cheque for \$200.00 intended as payment for a strata fine incurred by the tenant. The landlord paid the fine, submitted a copy of the cancelled cheque and requested compensation.

The landlord provided dated receipts for each of the expenses claimed.

The landlord stated the tenant did not provide a forwarding address. The landlord hired a skip tracing company who located the tenant.

The landlord requested reimbursement of the following expenses:

ITEM	AMOUNT
Rent – March 2020	\$2,398.50
Rent – April 2020	\$2,398.50
Strata fine	\$200.00
Cleaning	\$225.00
Repairs	\$372.65

Rubbish removal	\$184.00
Filing fee	\$100.00
TOTAL CLAIM	\$5,878.65

The landlord requested the security deposit be applied to the award as follows:

ITEM	AMOUNT
Total claim	\$5,878.65
(Less security deposit)	(\$1,100.00)
Monetary Order Requested	\$4,778.65

The landlord requested a monetary order of **\$4,778.65**.

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.

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*.

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 including receipts for each claimed expense.

I have considered all the evidence submitted by the landlord. This evidence included receipts for each item claimed, testimony that the unit needed cleaning and repairs, and the tenant's cancelled cheque for the payment of a strata fine.

Considering the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the unit needed cleaning when the tenant vacated, the tenant is responsible for the lack of cleanliness, the landlord incurred the amount claimed in cleaning expenses, and the landlord took all reasonable steps to mitigate expenses. I find the landlord is entitled to a monetary award in the amount requested for this aspect of the claim.

As well, in considering all the above-mentioned evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that unit needed repairs when the tenant vacated, the tenant is responsible for the damage, the landlord incurred the amount claimed in repairs, and the landlord took all reasonable steps to mitigate expenses. I find the damage is more than 'reasonable wear and tear'. I find the landlord is entitled to a monetary award in the amount requested for this aspect of the claim.

I accept the landlord's testimony supported by a copy of the cancelled cheque that the tenant did not pay a strata fine due by them.

I accept the landlord's testimony that the tenant vacated the unit that there was a balance of rent owing for March and April 2020. find the landlord has met the burden of proof with respect to the amount claimed in outstanding and accrued rent.

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 a monetary award to the landlord in the amount of **\$5,878.65**. **I authorize the landlord to apply the security deposit to the award.**

My award to the landlord is summarized as follows:

ITEM	AMOUNT
Rent – March 2020	\$2,398.50
Rent – April 2020	\$2,398.50
Strata fine	\$200.00
Cleaning	\$225.00
Repairs	\$372.65
Rubbish removal	\$184.00
Filing fee	\$100.00
TOTAL CLAIM	\$5,878.65

I authorize the landlord to apply the security deposit to the monetary award leaving a balance due to the tenant calculated as follows:

ITEM	AMOUNT
Total claim	\$5,878.65
(Less security deposit)	(\$1,100.00)
Monetary Order Requested	\$4,778.65

In summary, I grant the landlord a Monetary Order of **\$4,778.65**.

Conclusion

The landlord is entitled to a Monetary Order in the amount of **\$4,778.65**.

This Monetary Order must be served on the tenants. The Order may be filed and enforced in the Courts of the Province of British Columbia.

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 30, 2022

Residential Tenancy Branch