



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Harron Investments Inc. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on October 13, 2021 (the "Application"). The Landlord 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;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on May 31, 2022 as a teleconference hearing. Only the Landlords' Agents L.M. and S.Y. appeared and provided affirmed testimony. No one appeared for the Tenants. The conference call line remained open and was monitored for 14 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlords' Agents and I were the only persons who had called into this teleconference.

The Landlords' Agents testified that the Application was served to the Tenants by Canada Post Registered Mail on October 20, 2021 which was mailed to the forwarding address provided by the Tenants. The Landlord's Agents provided the tracking information confirming that the Tenants accepted the Landlord's mailing on October 26, 2021. In light of the above, I find that the Tenants were sufficiently served with the Landlord's Application on October 26, 2021 pursuant to Section 89 of the *Act*.

The Landlord's Agents stated that further evidence was served to the Tenants by Canada Post Registered Mail on March 26, 2022, however, the packages were later returned unclaimed. I find that the Tenants cannot avoid service and are deemed to

have been served with the Landlord's documentary evidence on March 31, 2022, the fifth day after the Registered Mailing.

The Landlord's Agents 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. Is the Landlord entitled to a monetary order for damage compensation or loss, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to retaining the security deposit, pursuant to Section 38, and 72 of the *Act*?
4. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord's Agents testified that the tenancy began on December 1, 2022. During the tenancy, the Tenants were required to pay rent in the amount of \$1,695.00 to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$847.50 which the Landlord continues to hold. The Landlord's Agents stated that the tenancy ended on or about September 19, 2021 in compliance with a 10 Day Notice to End Tenancy. The Landlord provided a copy of the tenancy agreement in support.

The Landlord is claiming \$2,240.00 in relation to loss of rent and late fee charges. The Landlord's Agents stated that the Tenants had an outstanding balance of rent in the amount of \$495.00 from August 2021 and failed to pay rent in the amount of \$1,695.00 which was due on September 1, 2021. The Landlord is also claiming \$25.00 for late rent fee as well as \$25.00 for NSF charge. The Landlord provided a copy of the 10 Day Notice and a Statement of Account in support.

The Landlord is claiming \$50.00 to repair walls in the rental unit which had holes in them. The Landlord's Agents stated that the Landlord was required to patch and paint the damaged walls. The Landlord provided pictures of the damage in support.

The Landlord is claiming \$200.00 to clean the rental unit as the Tenants did not leave the rental unit reasonably clean at the end of the tenancy. The Landlord provided pictures in support to demonstrate that the rental unit required further cleaning.

Lastly, the Landlord is claiming \$150.00 to re-key the rental unit as the Tenants failed to return the keys to the rental unit before the Landlord could establish a new tenancy and was required to change the locks of the rental unit.

No one appeared for the Tenants to dispute the Landlord's 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 Landlord 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 Landlord must then provide evidence that can verify the value of the loss or

damage. Finally, it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

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.

Section 26 of the Act states that a Tenant must pay the 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.

The Landlord is claiming \$2,240.00 in relation to loss of rent and bank charges. I accept that the Tenants failed to pay a portion of rent for August and no rent for September 2021. I find that the Tenants breached Section 26 of the Act and that the Landlord is entitled to recover the loss of rent as well as the application late and NSF charges associated with the non payments in the amount of **\$2,240.00**.

The Landlord is claiming \$50.00 to repair holes that were in the walls in the rental unit, as well as \$200.00 for cleaning the rental unit. I find that the Landlord provided sufficient evidence to demonstrate that the Tenants breached Section 37 of the Act by not leaving the rental unit reasonably clean and undamaged. As such, I award the Landlord compensation for a combined amount of **\$250.00** for cleaning and repairs.

Lastly, I accept that the Tenants did not return the keys to the Landlord at the end of the tenancy before the next occupant moved into the rental unit which contradicts Section 37 of the Act. I accept that the Landlord was required to re-key the rental unit at a cost of \$150.00. I find that the Landlord is entitled to recover **\$150.00** for loss as a result of the Tenants not returning the keys in a timely fashion.

Having been successful, I find the Landlord is entitled to recover the **\$100.00** filing fee paid to make the Application. I also find it appropriate in the circumstances to order that the Landlord retain the security deposit in the amount of \$847.50 in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$1,892.50, which has been calculated below;

Claim	Amount
Unpaid rent/bank charges:	\$2,240.00
Repairs/cleaning:	\$250.00
Re-Key rental unit	\$150.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-\$847.50
TOTAL:	\$1,892.50

Conclusion

The Landlord has established an entitlement to monetary compensation and has been provided with a monetary order in the amount of **\$1,892.50**. 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 31, 2022

Residential Tenancy Branch