



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on October 21, 2021. The Landlord applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- a monetary order for the cost to repair damage that the Tenant, their pets or their guests caused during the tenancy;
- a monetary order for compensation for monetary loss or other money owed;
- an order permitting the Landlord to retain the security deposit; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by JS and KS, agents, who provided affirmed testimony. The Tenant did not attend the hearing.

The Landlord testified that the Notice of Dispute Resolution Proceeding package was served on the Tenant by registered mail on October 27, 2021. Canada Post registered mail receipts were submitted in support. Pursuant to sections 89 and 90 of the Act, documents served in this manner are deemed to be received five days later. Therefore, I find these documents are deemed to have been received by the Tenant on November 1, 2021.

Although the Tenant submitted documentary evidence, the Tenant did not attend the hearing to dispute the Landlord's evidence.

On behalf of the Landlord, JS and KS were provided with the 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 the cost to repair damage that the Tenant, their pets or their guests caused during the tenancy?
2. Is the Landlord entitled to a monetary order for compensation for monetary loss or other money owed?
3. Is the Landlord entitled to an order permitting the Landlord to retain the security deposit?
4. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

On behalf of the Landlord, JS and KS confirmed the tenancy began on July 1, 2017 and ended on September 21, 2021. Rent of \$1,039.35 per month was due on the first day of each month. The Tenants paid a security deposit of \$487.50, which has been retained by the Landlord pending the outcome of this hearing.

The Application discloses a total claim for \$1,514.35 which is particularized in the application.

In support of the claims, the Landlord submitted a Condition Inspection Report which indicates that a move-in inspection occurred on July 1, 2017. The Landlord testified that a move-out inspection was started with the Tenant present but that he left before it was completed.

First, the Landlord claimed \$375.00 for damage to the bathtub (\$250.00), stovetop (\$25.00), and kitchen counter (\$100.00). In support, the Landlord submitted three photographs of scratches on the bathtub, one photograph of a chipped stovetop, and two photographs of the kitchen counter. The photographs are all date-stamped September 21, 2021. JS and KS testified the damage occurred during the tenancy.

The Landlord also submitted a Work Order dated October 7, 2021. The Work Order indicates that the bathtub was reglazed at a cost of \$250.00 and the stovetop was sanded and touched up at a cost of \$25.00. JS and KS confirmed the Landlord did not repair the countertop

Second, the Landlord claimed \$1,039.35 for rent due on October 1, 2021. JS and KS testified the Tenant gave notice to end the tenancy on or about September 11, 2021 and moved out on September 21, 2021. However, the Tenant did not pay rent due on October 1, 2021. A copy of the Tenant's notice was submitted into evidence. JS and KS testified the Landlord was unable to re-rent the unit until November 13, 2021.

Finally, the Landlord seeks to recover the \$100.00 filing fee paid to make the application and asks that the security deposit be retained in partial satisfaction of the claim.

The Tenant did not attend the hearing to dispute the Landlord's evidence.

Analysis

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

Section 67 of the Act empowers the director 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 because 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 Tenant. 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.

With respect to the Landlord's claim for \$375.00 for the cost of repairs, I find the Landlord is entitled to a monetary award of \$275.00 for the cost incurred to repair the bathtub and stovetop. The testimony of JS and KS was supported by a Condition Inspection Report and photographic evidence. I accept that the Landlord did not repair the countertop and that the Landlord did not suffer that loss.

With respect to the Landlord's claim for \$1,039.35 for unpaid rent, section 26 of the Act confirms a tenant must pay rent when due, whether or not the landlord complies with the Act, Residential Tenancy Regulation, or the tenancy agreement, unless the tenant has a right under the Act to withhold rent.

Further, section 45 of the Act states that a tenant may only end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. In this case, the Tenant's notice to end tenancy, dated September 11, 2021, could not have been effective before October 31, 2021. Therefore, I find that rent of \$1,039.35 became due on October 1, 2021, but was not paid by the Tenant. I find the Landlord is entitled to a monetary award of \$1,039.35 for unpaid rent due on October 1, 2021.

Having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. I also order that the Landlord is entitled to retain the security deposit 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 \$901.85, which has been calculated as follows:

Claim	Allowed
Repair damage:	\$250.00
Rent due October 1, 2021	\$1,039.35
Filing fee:	\$100.00
LESS security deposit:	(\$487.50)
TOTAL:	\$901.85

Conclusion

The Landlord is granted a monetary order in the amount of \$901.85. The order 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: June 7, 2022

Residential Tenancy Branch