



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRG THE RESIDENTIAL GROUP
REALTY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCL-S, MNDL-S, 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 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.

LP and CZ attended as agents for the landlord ("the landlord"). The landlord had opportunity to provide affirmed testimony, present evidence and make submissions.

The hearing process was explained.

The tenant did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 40 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 had been provided.

The landlord stated they were not recording the hearing.

The landlord provided the email address to which the Decision shall be sent. The landlord confirmed the tenant's address provided by the tenant before vacating the unit to which a copy of the Decision shall be sent.

Preliminary Issue – Service

The landlord testified that they obtained an Order of Substituted Service authorising service of the Notice of Hearing and Application for Dispute Resolution on the tenant by registered mail at the email address provided by the tenant. The tenant submitted a copy of the Order as evidence.

The landlord testified that pursuant to the Order for Substituted Service, they served the tenant with the Notice of Hearing, evidentiary materials and the Order by email as required in the Order on November 26, 2021. The documents are deemed received by the tenant under section 90 three days after mailing, on November 29, 2021.

Further to sections 89 and 90, I find the landlord served the tenant with the documents on November 29, 2021.

Issue(s) to be Decided

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 apply the security deposit to the award, and reimbursement of the filing fee?

Background and Evidence

The landlord submitted substantial evidentiary documents including copies of correspondence with the tenant, a written statement, Condition Inspection Report on moving in, photographs, copies of estimates and invoices, and a Monetary Order Worksheet. Not all this evidence is referenced in my Decision.

The landlord provided uncontradicted evidence as the tenant did not attend the hearing although served.

The landlord submitted a copy of the tenancy agreement.

The tenancy began on April 3, 2020. Rent in the amount of \$3,200.00 was payable on the first of each month. The tenant paid a security deposit of \$1,600.00 which the landlord holds.

A condition inspection was conducted on moving in and the landlord submitted a signed copy of the report indicating the unit was in good condition in all material respects.

This is the second hearing between the parties. The first Decision is dated September 30, 2021, and the file number appears on the first page.

The landlord testified that they rented the premises fully furnished to the tenant. The furnishings were high quality. The landlord stated that the tenant removed their property from the premises without their permission and failed to return it because of which the landlord issued a One Month Notice.

The Arbitrator dismissed the tenant's application to cancel a One Month Notice and granted an Order of Possession. The tenant attended the hearing and argued that the removal of the missing items was temporary, and they were safely stored. The Arbitrator found the tenant was not credible and stated:

In this case, I am satisfied that the tenant has failed to return the furniture to the furnished rental unit and have failed to notify the landlord when damage has occurred to the furniture as required.

In the matter before me, there is a \$6,000.00 curtain and a \$2,000.00 couch which has been disposed of by the tenant, which I find is damage to the living accommodation rented. This cannot be repaired, nor has it been replaced by the tenant. I find it would be unreasonable for the landlord to have to wait "until the end of the tenancy" for the tenant to rectify the problem or to return the furniture if they truly have

it in their possession.

I find the Notice issued has been proven by the landlord, is valid and is enforceable. Therefore, I dismiss the tenant's application to cancel the Notice.

As the tenancy legally ended on the effective date of the Notice, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two (2) days** after service on the tenant.

I Order the tenant immediately return to the landlord all furniture provided under the terms of the tenancy agreement. Should the tenant fail to comply with my order the landlord is entitled to claim against the tenant for any loss or damage

The landlord testified the tenant was served with the Order of Possession of September 30, 2021 effective on two days notice, but overstayed. The tenant left his keys with the concierge on October 20, 2021 and did not leave a forwarding address. Rent was owed. The landlord was unable to contact the tenant.

The landlord testified the tenant did not return any of the missing items.

After the tenant abandoned the unit, the landlord inspected the unit and discovered:

1. Furniture – more items were missing; some had been replaced with inexpensive items. The landlord submitted a complete multi-page inventory with valuations.
2. Damage – the walls, kitchen faucet, and appliances were damaged or missing parts; 2 TVs were removed from the walls; the internet equipment was missing.
3. Cleaning – the unit required considerable cleaning.
4. Personal possessions – the tenant left items requiring the landlord to incur expenses for debris removal
5. Strata fines – the tenant left considerable fines owing the strata.

6. Keys and fob – these items were missing, required replacement and the landlord hired a locksmith

The landlord submitted considerable supporting documents in support of the claims. The landlord summarized their claim as follows:

ITEM	AMOUNT
Rent outstanding	929.00
Compensation for missing or damaged furniture	22,349.00
Fobs and locksmith - invoice	348.24
Wall repair - invoice	496.13
Strata fines- invoice	2200
Junk removal - invoice	250.00
Cleaning - invoice	625.00
Internet and cable equipment - invoice	\$498.00
Kitchen tap - estimate	\$250.00
Freight cost - estimate	\$511.88
TOTAL	\$28,457.25

The landlord requested reimbursement of the filing fee and authorization to apply the security deposit to the award:

ITEM	AMOUNT
Claim - above	\$28,457.25
Filing fee	100.00
(Less security deposit)	(1,600.00.
TOTAL	\$26,957.25

The landlord requested a Monetary Order of **\$26,957.25**.

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.

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 credible testimony supported in all material aspects by well-organized and comprehensive documents.

The landlord was a credible applicant and I give considerable weight to their submissions.

Considering the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the tenant left rent owing, the unit was damaged when the tenant vacated, furnishings were missing or damaged. I find the tenant is responsible for all these matters, the landlord incurred the amount claimed in expenses, the expenses are reasonable as supported by credible documentary evidence, 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.

I award the landlord compensation as follows:

ITEM	AMOUNT
Rent outstanding	929.00
Compensation for missing or damaged furniture	22,349.00
Fobs and locksmith - invoice	348.24
Wall repair - invoice	496.13
Strata fines- invoice	2200
Junk removal - invoice	250.00
Cleaning - invoice	625.00
Internet and cable equipment - invoice	\$498.00
Kitchen tap - estimate	\$250.00
Freight cost - estimate	\$511.88
TOTAL	\$28,457.25

As the landlord has been successful in this claim, I grant the landlord reimbursement of the filing fee of \$100.00.

I authorize the landlord to apply the security deposit to the award.

In summary, I grant the landlord a Monetary Order of **\$26,957.25 as follows:**

ITEM	AMOUNT
Claim - above	\$28,457.25
Filing fee	100.00
(Less security deposit)	(1,600.00.
TOTAL	\$26,957.25

Conclusion

I grant the landlord a Monetary Order of **\$26,957.25. The Order must be served on the tenant. The Order may be filed and enforced in the Courts of the Province of BC.**

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 24, 2022

Residential Tenancy Branch