



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the Landlord's application under the Residential Tenancy Act (the "Act") for:

- a Monetary Order for unpaid rent pursuant to sections 26 and 67;
- a Monetary Order for monetary loss or other money owed pursuant to section 67;
- authorization to recover the filing fee pursuant to section 72; and
- authorization to retain the security deposit pursuant to section 72(2)(b).

The Landlord's agent TV and the Tenants attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. During the hearing, the Tenants were assisted by their interpreter, IM.

All attendees at the hearing were advised the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

The parties did not raise any issues with respect to serve of dispute resolution documents. The Tenants confirmed receipt of the Landlord's notice of dispute resolution proceeding package and documentary evidence. The Tenants did not submit any documentary evidence and are relying on oral testimony for this application.

Issues to be Decided

1. Is the Landlord entitled to a Monetary Order for unpaid rent?
2. Is the Landlord entitled to a Monetary Order for monetary loss or other money owed?
3. Is the Landlord entitled to recover the filing fee?
4. Is the Landlord entitled to retain the security deposit?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on June 5, 2020 and ended on December 3, 2021. Rent was \$2,695.00 per month. The Tenants paid a security deposit of \$1,347.50 which is held by the Landlord. A copy of the tenancy agreement has been submitted into evidence.

TV testified that the Landlord obtained an Order of Possession following a dispute resolution proceeding in November 2021. TV also confirmed the Landlord has obtained a Monetary Order for unpaid November 2021 rent via a direct request proceeding. The file numbers for these two proceedings are referenced on the cover page of this decision.

TV testified that the Tenants were served with the Order of Possession but did not move out within two days, so the Landlord hired bailiffs for obtaining a Writ of Possession. TV testified the Landlord received notice from the Tenants that they would move out after the Landlord had already sent documents to the bailiffs. TV confirmed the Landlord called the bailiffs to cancel but the bailiffs had already incurred some fees. The Landlord submitted copies of a court bailiff receipt dated December 1, 2021 and a bailiff invoice dated December 17, 2021 in support.

TV confirmed the Landlord is also claiming unpaid utilities as well as a late fee and NSF fee for the unpaid November 2021 rent. TV confirmed that section 4.1 of the tenancy agreement provides for late fees. The Landlord submitted an amended Monetary Order Worksheet as well as copies of utilities invoices in support of the amounts claimed.

TV testified that on December 3, 2021, the parties conducted a move-out inspection and the Tenants provided their forwarding address to the Landlord.

One of the Tenants, IH, stated that the Tenants agree to the utilities claimed by the Landlord but noted the Landlord could have emailed the invoices to the Tenants. IH mentioned that the utilities were split with other tenants in the house.

IH testified the Tenants did not pay November 2021 rent because the Landlord had issued a two month notice to end tenancy and the Tenants were entitled to withhold rent for the last month.

IH testified the parties had their hearing on November 4, 2021 and the decision was issued on November 17, 2021. IH confirmed the Tenants left the rental unit once their application for review of the November 17, 2021 decision was refused on December 1, 2021.

The Tenants dispute the bailiff charges claimed by the Landlord. The Tenants argued the Landlord knew the Tenants would be leaving peacefully on December 1, 2021.

The Tenants argued that they are entitled to return of double the deposit from the Landlord.

Analysis

1. Is the Landlord entitled to a Monetary Order for unpaid rent?

The Landlord has already obtained a Monetary Order for November 2021 rent via the direct request process. As such, I find that the Landlord's claim regarding unpaid rent for November 2021 is *res judicata* ("something already decided"). I dismiss the Landlord's claim under this part without leave to re-apply.

I note the Tenants argue that they were entitled to withhold November 2021 rent as compensation for the two month notice to end tenancy issued by the Landlord. In my view, the Tenants could have disputed the 10 day notice to end tenancy on this basis but did not do so. In any event, the issue of compensation to the Tenants needs to be addressed in a separate application. Since this hearing only deals with the Landlord's application and there is no cross-application from the Tenants before me, I am unable to consider any claim for compensation by the Tenants. I make no finding on the merits of any possible claim(s) that the Tenants may have.

2. Is the Landlord entitled to a Monetary Order for monetary loss or other money owed?

The Landlord seeks compensation for the following items:

Item	Amount
Court Bailiff	\$120.00
Late Fee and NSF	\$50.00
FortisBC	\$449.55
BC Hydro	\$131.80
Bailiff	\$248.83
Total	\$1,000.18

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the evidence before me, I am satisfied that the Landlord is entitled to compensation from the Tenants in the amount of \$1,000.18.

I find the Tenants have acknowledged and agreed to the amounts claimed by the Landlord for BC Hydro and FortisBC.

Given that the issue of unpaid November 2021 rent is *res judicata*, I find the Landlord is entitled to claim a late fee and NSF for November 2021 pursuant to section 4.1 of the tenancy agreement and section 7 of the Residential Tenancy Regulation.

Lastly, I find the bailiff fees claimed by the Landlord to be incurred in the course of enforcing compliance with an order of the director under the Act and reasonable in the circumstances. I find there is insufficient evidence to suggest that the bailiff fees were incurred before the review decision was issued on December 1, 2021. I further find that the Landlord reasonably mitigated its loss by canceling the bailiff service once the Landlord was satisfied the Tenants would be vacating the rental unit peacefully.

Accordingly, I conclude that the Landlord is entitled to recover \$1,000.18 from the Tenants pursuant to section 67 of the Act.

3. Is the Landlord entitled to recover the filing fee?

The Landlord has been successful in this application. I grant the Landlord's claim for recovery of the \$100.00 filing fee under section 72(1) of the Act.

The total amount awarded to the Landlord on this application is \$1,000.18 plus \$100.00, or \$1,100.18.

4. Is the Landlord entitled to retain the security deposit?

The Landlord has received authorization to retain \$100.00 from the security deposit in a previous decision.

The Tenants argue they are entitled to double the security deposit. Section 38 of the Act states that a landlord must pay the tenant double the security deposit if the landlord does not return the security deposit or make an application for dispute resolution claiming against the security deposit within 15 days of the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address.

In this case, I find that the Landlord made an application for dispute resolution claiming against the security deposit within 15 days of receiving the Tenants' forwarding address. I accept TV's testimony that the Landlord received the Tenants' forwarding address on December 3, 2021. Records indicate the Landlord made this application on December 16, 2021. Accordingly, I find the Tenants are not entitled to double the security deposit pursuant to section 38 of the Act.

Pursuant to section 72(2)(b) of the Act, I order that the Landlord is authorized to retain \$1,100.18 from the remaining security deposit held by the Landlord in full satisfaction of the amount awarded in this application.

I order the Landlord to return the balance of the security deposit to the Tenants calculated as follows:

Item	Amount
Security Deposit	\$1,347.50

Less Filing Fee Awarded in Previous Decision		- \$100.00
Less Amount Awarded in this Application		
Court Bailiff	\$120.00	
Late Fee and NSF	\$50.00	
FortisBC	\$449.55	
BC Hydro	\$131.80	
Bailiff	\$248.83	
Filing Fee	\$100.00	
Subtotal	\$1,100.18	- \$1,100.18
Monetary Order for Tenants		\$147.32

Conclusion

The Landlord is authorized to retain \$1,100.18 from the Tenants' security deposit in full satisfaction of the amount awarded in this application.

I grant the Tenants a Monetary Order in the amount of \$147.32 for the balance of their security deposit. This Order may be served on the Landlord, filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. This Order may also be offset against any unpaid Monetary Order that the Tenants may owe to the Landlord.

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: August 16, 2022

Residential Tenancy Branch