



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL, MNDCL-S

Introduction

On December 15, 2021 the Landlord submitted an Application for Dispute Resolution (the “Application”), seeking relief pursuant to the *Residential Tenancy Act* (the “Act”) for the following:

- a monetary order for unpaid rent;
- a monetary order for damage, compensation or loss;
- an order granting authorization to retain the security deposit; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised with respect to service, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

Preliminary Matters

The Landlord had submitted a claim for compensation in the amount of \$500.00 for loss of wages. During the hearing, the Landlord requested to withdraw this claim. The claim was withdrawn accordingly. The hearing continued based on the Landlord’s claim for loss of rent.

The parties were given an 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Should the Landlord be authorized to apply the security deposit against their claim, in accordance with Section 38 and 72 of the *Act*?
3. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy started on July 9, 2012. Near the end of the tenancy, the Tenant was required to pay rent in the amount of \$1,136.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$500.00 which the Landlord continues to hold. The tenancy ended on November 30, 2021.

The Landlord is claiming \$1,136.00 for loss of rent for the month of December 2021. The Landlord testified that he received a notice to end tenancy from the Tenant dated November 14, 2021, indicating that she is vacating the rental unit as of November 30, 2021. The Landlord testified that he attempted to re-rent the rental unit, however, was unable to find a new occupant until January 1, 2022. The Landlord stated that the new occupant was able to start moving in their possessions on December 22, 2021, however, the Landlord denied collecting pro rated rent for these extra days.

The Tenant indicated that she provided the Landlord with notice to end tenancy as she purchased a new home and was notified on November 14, 2021 that the possession date was on November 30, 2021. As such, the Tenant ended the tenancy as of November 30, 2021. The Tenant stated that she has always paid rent on time, was dealing with finalizing a divorce and was very stressed out at the time. Furthermore, the Tenant stated that the Landlord did not complete a condition inspection report with the Tenant at the end of the tenancy.

Analysis

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*. Pursuant to Residential Tenancy Policy Guideline #16 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 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.

According to Section 45 (1) of the *Act*; a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that;

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) 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 parties agreed that the Tenant provided the Landlord with her notice to end tenancy on November 14, 2021 before the tenancy ended on November 30, 2021. I find that the Tenant ended the tenancy early, without providing the Landlord with proper notice pursuant to Section 45(1) of the *Act*.

I accept that the Landlord attempted to re-rent the rental unit, however, was unable to find a new occupant until January 1, 2022. As such, I find that the Landlord has incurred

a loss of rent for December 2021 and is entitled to compensation in the amount of **\$1,136.00**.

During the hearing, the Tenant raised the fact that the Landlord failed to complete a condition inspection report at the end of the tenancy. In this case, the Tenant's argument that the Landlord extinguished their right to claim against the security deposit has no effect, as extinguishment under either sections 24 and 36 of the *Act* only relate to claims for damage to the rental unit. In this case, the Landlord's claims do not relate to damage to the rental unit, as a result, whether they extinguished or not has no bearing on the outcome of the current Application.

Having been successful, I find the Landlord is entitled to recover the filing fee paid to make the Application. I also find it appropriate in the circumstances to order that the Landlord retain the \$500.00 security deposit held 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 \$736.00, which has been calculated as follows:

Claim	Amount
Unpaid Rent	\$1,136.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-(<i>\$500.00</i>)
TOTAL:	\$736.00

Conclusion

The Landlord is granted a monetary order in the amount of \$736.00. The order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of BC (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: August 24, 2022

Residential Tenancy Branch