



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL
 MNSD, MNDCT

Introduction

This hearing convened as a result of cross applications. In the Landlord's Application for Dispute Resolution, filed on December 25, 2021, the Landlord sought monetary compensation from the Tenants for unpaid rent, the cost to change the locks on the rental unit, and recovery of the filing fee. The Landlord also sought an Order that he be permitted to retain the Tenants' security and pet damage deposit towards the amounts claimed. In the Tenants' Application for Dispute Resolution, filed July 11, 2022, they sought monetary compensation from the Landlord and return of their deposits.

The hearing of the cross applications was scheduled for 1:30 p.m. on August 22, 2022. Only the Landlord called into the hearing which lasted 21 minutes. The Landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

Preliminary Matter—Analysis and Conclusion of Tenant's Application

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure* (the "Rules"). Rules 7.1, 7.3 and 7.4 address the requirement of a party to call into the teleconference hearing and read as follows:

7.1 Commencement of Hearing

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

The Tenants bear the burden of proving their claim on a balance of probabilities. In the absence of any evidence or submissions from the Tenants and in the absence of the Tenants' participation in this hearing, I dismiss their Application without leave to reapply. I make no findings on the merits of their claims.

As the Tenants failed to call into the hearing, I considered service of the Landlord's Application materials. The Landlord confirmed that he served the Tenants notice of his Application for Dispute Resolution by sending his Application and supporting materials to the address they provided as their forwarding address. He further confirmed he did so by registered mail on January 21, 2022 and provided the receipt and tracking numbers for these packages.

Residential Tenancy Policy Guideline, "12. Service Provisions" provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90(a) of the *Residential Tenancy Act* (the "*Act*"), documents served by registered mail are deemed served five days later; accordingly, I find the Tenants were duly served as of January 26, 2022. As the Landlord appeared at the hearing and had served the Tenants in accordance with the *Act* I proceeded with the hearing of the Landlord's Application in the Tenants' absence.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. Should the Landlord be entitled to retain the Tenants' deposits towards any amounts awarded?
3. Should the Landlord also be entitled to recover the filing fee paid for his Application?

Background and Evidence

The Landlord provided a copy of the residential tenancy agreement which confirmed this tenancy initially began as a one year fixed term tenancy on April 1, 2017, and continued as a month to month tenancy following the expiration of the fixed term. Monthly rent was payable in the amount of \$1,500.00 and the Tenants paid a security deposit of \$750.00 and a pet damage deposit of \$750.00. During the hearing the Landlord testified that rent was not raised and remained \$1,500.00 until the end of the tenancy.

The tenancy ended as the Landlord issued a 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49 of the *Act*. On December 6, 2021 the Tenants exercised their option to end their tenancy earlier pursuant to section 50 of the *Act* and moved out of the rental unit on December 16, 2021. The Landlord confirmed that the Tenants gave their forwarding address to the Landlord on December 16, 2021 via social media; he accepted this message and used the address to serve his Application for Dispute Resolution on the Tenants.

On the Landlord's Application he indicated that he sought the sum of \$6,903.35 in compensation from the Tenants for unpaid rent, the cost to replace the locks and recovery of the filing fee. In support of the Application the Landlord also provided a spreadsheet setting out the amounts outstanding for rent. The amount claimed on the Application and the spreadsheet were inconsistent. During the hearing the Landlord clarified the amounts owing. He testified that the Tenants paid some rent at times, overpaid on one occasion, received government assistance for some payments, and at the end of the tenancy were \$4,274.19 in arrears of rent, including paying the prorated amount for December 2021.

The Landlord testified that there was a misunderstanding with the Tenants as they believed they didn't have to pay. He further stated that he wasn't sure what was to do about the unpaid rent as he was worried about the Tenants facilitating showings of the rental unit as they were obstructive and getting in the way of the sale. He stated that he told the Tenants not to focus on the unpaid rent, but to focus on the open houses, and the Tenants interpreted that to be him not requiring unpaid rent.

The Landlord also sought the sum of \$129.16 for the cost of having the locks changed as only one of three keys was returned by the Tenants. He also sought recovery of the \$100.00 filing fee.

Analysis

After consideration of the Landlord's undisputed testimony and evidence before me, and on a balance of probabilities I find the following.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides 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. Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 26 of the *Act* requires a tenant to pay rent when rent is due. In this case, I find the Tenants were obligated to pay monthly rent in the amount of \$1,500.00. I accept the Landlord's undisputed testimony that the Tenants failed to pay rent as required, and that at the end of the tenancy the sum of **\$4,274.19** was outstanding. The Landlord confirmed that this sum accounted for a free month of rent pursuant to a 2 Month Notice to End Tenancy for Landlord's Use as well as a prorated amount for the month of December when the Tenant's exercised their option to end their tenancy early pursuant to section 50 of the *Act*. I therefore award the Landlord compensation from the Tenants for this sum.

I also accept the Landlord's testimony that the Tenants failed to return all the keys to the rental unit. Section 37(2)(b) of the *Act* requires a Tenant to return *all* keys to the

Landlord. As the Tenants failed to comply with this requirement, I award the Landlord the **\$129.16** claimed for the cost to change the locks at the rental unit.

As the Landlord has been successful in his Application, I also award him recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*.

Conclusion

The Tenants failed to call into the hearing. Their Application is dismissed without leave to reapply.

The Landlord is awarded monetary compensation from the Tenants in the amount of **\$4,503.35** calculated as follows:

Unpaid rent	\$4,274.19
Cost to change locks on rental unit	\$129.16
Filing fee	\$100.00
TOTAL	\$4,503.35

I authorize the Landlord to retain the Tenant's security deposit of \$750.00 and pet damage deposit in the amount of \$750.00 and I award the Landlord a Monetary Order for the balance due in the amount of **\$3,003.35**. This Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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 26, 2022

Residential Tenancy Branch