



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

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

- a Monetary Order of \$4,450.00 for unpaid rent pursuant to sections 26 and 67;
- an order to keep the Tenant's security and pet damage deposit pursuant to section 72; and
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72.

The Landlord attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, and to make submissions. The Landlord's interpreter GK also attended this hearing to assist the Landlord.

The Tenant did not attend this hearing. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Landlord and I were the only ones who had called into the hearing.

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

Preliminary Matter – Amendment of Application

The Landlord testified that he found out the Tenant had vacated the rental unit on March 3, 2022. The Landlord testified he found the door to the rental unit open and garbage

left everywhere. The Landlord requested an amendment to include unpaid rent to March 3, 2022.

The Landlord also sought to amend this application to include a claim for damage to the rental unit.

Rules 4.1 and 4.2 of the Rules of Procedure state:

4.1 Amending an Application for Dispute Resolution

An applicant may amend a claim by:

- completing an Amendment to an Application for Dispute Resolution form; and
- filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch directly or through a Service BC Office.

An amendment may add to, alter or remove claims made in the original application.

As stated in Rule 2.3 [*Related issues*], unrelated claims contained in an application may be dismissed with or without leave to reapply.

See also Rule 3 [*Serving the application and submitting and exchanging evidence*].

Amendments to applications for expedited hearings may only be made at the hearing. See Rule 10.7 [*Amending an application for an expedited hearing*].

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case, I allow the Landlord's request to amend his application under Rule 4.2, to include unpaid rent up to the day that the Tenant vacated the rental unit, or March 3, 2022.

However, I find the Landlord's claim regarding damage to the rental unit is not one that can reasonably be anticipated by the Tenant under Rule 4.2. I find the Landlord would have needed to complete an Amendment to an Application for Dispute Resolution form

under Rule 4.1 and serve copies of the amendment materials on the Tenant in advance as required under Rule 4.6. Since the Landlord has not done so, I decline to amend the Landlord's application to include this claim. The Landlord is at liberty to make a separate application regarding compensation for damage to the rental unit.

Issues to be Decided

1. Is the Landlord entitled to a Monetary Order for unpaid rent?
2. Is the Landlord entitled to recover the filing fee?
3. Is the Landlord entitled to retain the Tenant's security deposit and pet damage deposit?

Background and Evidence

This tenancy commenced on December 1, 2021 and was month-to-month. Rent was \$2,900.00 due on the first day of each month. The Tenant paid a \$1,250.00 security deposit and a \$1,250.00 pet damage deposit, which are held in trust by the Landlord. A copy of the tenancy agreement has been submitted into evidence.

The Landlord testified that the Tenant has an overdue balance of \$1,450.00 from rent due in January 2022. The Landlord testified that the Tenant did not pay rent for February or March 2022.

The Landlord submitted a copy of a 10 day notice to end tenancy for unpaid rent dated January 4, 2022 and text message correspondence in support.

Analysis

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

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

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 Landlord's undisputed testimony, I find that the Tenant failed to pay \$1,450.00 in rent from January 2022 and has not paid rent for February or March 2022. Furthermore, I accept the Landlord's testimony that he discovered the rental unit vacant on March 3, 2022. I find that the Landlord is entitled to compensation for unpaid rent from the Tenant up to March 3, 2022 under section 67 of the Act.

Pursuant to section 67 of the Act, I order the Tenant to pay the Landlord \$1,450.00 + \$2,900.00 + ($\$2,900.00 \times 3 \text{ days} / 31 \text{ days}$) = \$4,630.65, as compensation for unpaid rent up to March 3, 2022.

2. 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.

3. Is the Landlord entitled to retain the Tenant's security deposit and pet damage deposit?

Pursuant to section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the \$1,250.00 security deposit and \$1,250.00 pet damage deposit held by the Landlord in partial satisfaction of the total awarded in this application.

The Monetary Order granted to the Landlord for the balance of the amount awarded is calculated as follows:

Item	Amount
Balance of Unpaid Rent for January 2022 Balance	\$1,450.00
Unpaid Rent for February 2022	\$2,900.00
Unpaid Rent from March 1, 2022 to March 3, 2022 ($\$2,900.00 \times 3 \text{ days} / 31 \text{ days}$)	\$280.65
Filing Fee	\$100.00
Subtotal	\$4,730.65

Less Security Deposit	- \$1,250.00
Less Pet Damage Deposit	- \$1,250.00
Total Monetary Order for Landlord	\$2,230.65

Conclusion

The Landlord is entitled to compensation for unpaid rent up to March 3, 2022 and recovery of the filing fee for a total sum of \$4,730.65.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain the Tenant's \$1,250.00 security deposit and \$1,250.00 pet damage deposit in partial satisfaction of the amount awarded in this decision.

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$2,230.65** for the balance awarded. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: September 21, 2022

Residential Tenancy Branch