



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes tenant: **CNR, OLC, FFT**
 landlord: **FFL, MNRL, OPB**
 FFL, OPR-DR, MNR-DR, MNDCL, MNDL, MNRL

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with applications filed by both the tenants and the landlord pursuant the Act.

The tenants applied for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62 and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord filed two applications. The first was for:

- Authorization to recover the filing fee from the other party pursuant to section 72;
- A monetary order for unpaid rent pursuant to sections 26 and 67; and
- An order of possession because the tenancy agreement states the tenant will vacate the rental unit at the end of the fixed term tenancy, pursuant to section 55.

The landlord's second application by direct request was for:

- Authorization to recover the filing fee from the other party pursuant to section 72;
- An order of possession for unpaid rent, by direct request, pursuant to sections 46 and 55;
- A monetary order for unpaid rent, by direct request, pursuant to sections 26 and 67;
- A monetary order for damages or compensation pursuant to section 67;

- A monetary order for damages caused by the tenant or the tenant's guests pursuant to sections 7 and 67; and
- A monetary order for unpaid rent pursuant to sections 26 and 67.

The tenants did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing which commenced at 9:30 a.m. and ended at 10:30 a.m. 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.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that he personally served the tenant MO with two sets of the Notice of Dispute Resolution Hearing packages on August 8, 2022. The landlord testified that MO told him that as of August 8th, he resides with the named co-tenant, his brother, OO.

The landlord testified that on August 23, 2022, he personally served the tenant MO with two sets of amendment packages, one for MO and the other for OO who was waiting in the car when the packages were given to MO. Based on the undisputed testimony of the landlord, I am satisfied the tenants were duly served with the Notice of Dispute Resolution Hearing package and the amendments on August 8th and August 23rd, respectively, pursuant to sections 89 and 90 of the Act.

Preliminary Issue

At the commencement of the hearing, the landlord testified that the tenants had vacated the rental unit on July 2, 2022. Pursuant to section 44(1)(f), I order that the tenancy ended on July 2, 2022 and both the tenant's application to dispute the notice to end tenancy and the landlord's application seeking an order of possession are dismissed without leave to reapply. The tenants' application seeking an order that the landlord comply with the Act, regulations or tenancy agreement is likewise cancelled as the tenancy has ended.

In the amendment filed on August 23rd, the landlord added the issue of compensation for damage caused by the tenant, their pets or guests to the unit, site or property. I determined that this issue was unrelated to the landlord's original issues of compensation for unpaid rent and utilities and I exercised my discretion to dismiss this portion of the landlord's (amended) claim with leave to reapply at the commencement of the hearing pursuant to rule 2.3 of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and utilities?

Background and Evidence

As the tenants did not attend the hearing, none of the evidence provided by them was referred to during this hearing. While I have turned my mind to all the documentary evidence provided by the landlord, not all the details of the landlord's submissions and/or arguments are reproduced here. The principal aspects have been recorded and will be addressed in this decision.

The landlord gave the following undisputed testimony. On September 1, 2022, an arbitrator heard an application filed by the tenants seeking a rent reduction and authorization to change locks. This application was dismissed without leave to reapply as the tenancy had already ended and because the tenants failed to attend the hearing. The file number of the other file is recorded on the cover page of this decision.

The tenancy began on January 1, 2022, with rent set at \$1,450.00 per month payable on the first day of each month. In addition, the parties agreed the tenants would pay an additional \$30.00 for internet access and the tenants would pay one third of utilities. The landlord collected a security deposit of a FULL month's rent (\$1,450.00) and the landlord did not conduct a condition inspection report with the tenants at the commencement of the tenancy.

The landlord testified that the tenants paid rent for January, February, March and April, however they didn't pay rent for May, June or July. The tenancy ended on July 2, 2022, however the landlord seeks payment for entire month of July because the condition of the rental unit when the tenants vacated it was so bad, it couldn't be rented out immediately. Further, the landlord testified that he was busy and couldn't get rid of the tenant's possessions right away. The landlord testified that although the tenants promised the landlord that they would be gone by the end of June, the landlord didn't seek out new tenants for July 1st because the tenants had once previously told him they would move out at the end of April and never followed through. The landlord wasn't sure the tenants would be out of the rental unit in time.

The landlord testified that the tenants paid the additional \$30.00 internet fees up until the end of February, but failed to pay March, April, May and June.

The tenants failed to pay any of the Gas bills from Fortis BC and the landlord provided the bills from Fortis spanning the entire length of the tenancy up until the end. Likewise, the tenants failed to pay the electricity bills from BC Hydro and the landlord provided these invoices, as well.

The tenants were to pay water and sewer bills and the landlord provided invoices from the municipality from January 1 to June 30th.

Lastly, the landlord seeks a third of the cost he pays for garbage and recycling for each of the months from March, 2022 onward at \$14.50 per month. The landlord testified that he does not have any documentary evidence to support this amount. The amount is taken from his taxes each year by the municipality however the landlord did not provide a copy of the city's tax statement.

The landlord testified that he requested that the tenants attend the rental unit with him for a move-out condition inspection report on July 2nd, but the tenants did not attend. The landlord testified that the tenants provided him with their forwarding address in writing on August 23, 2022. The landlord also seeks to recover the fees spent to mail documents to the tenant via registered mail.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the landlord must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party* in violation of the *Act* or Tenancy Agreement

3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

The tenant did not attend this hearing to contradict any of the landlord's testimony or documentary evidence. Based on the undisputed evidence of the landlord, I find the tenants were obligated to pay monthly rent in the amount of \$1,450.00 per month and failed to do so, contrary to section 26 of the *Act*, for the months of May and June 2022. Pursuant to section 67, the tenants are to pay the landlord **\$2,900.00** for unpaid rent.

The landlord seeks an additional \$1,450.00, as rent for the month of July because the rental unit was left unclean and not ready for occupancy. Residential Tenancy Branch Policy Guideline PG-3: [Claims for Rent and Damages for Loss of Rent] states at part D:

D. Loss of rent due to damage

When a tenant vacates a rental unit or manufactured home site, they must leave it reasonably clean and undamaged except for reasonable wear and tear (section 37 of the *RTA* and section 30 of the *MHPTA*). If a tenant does not comply with this requirement and the premises are un-rentable because of this, then in addition to compensation for the damage to the property or for cleaning, the landlord can also seek compensation for loss of rent. The landlord is required to mitigate this loss by completing the cleaning or repairs in a timely manner.

I have viewed the photos provided by the landlord comparing the condition of the rental unit at the commencement of the tenancy to the condition when the tenants had vacated it. I find that tenants breached section 37 of the *Act* and didn't leave the rental unit reasonably clean except for reasonable wear and tear. Consequently, I find the premises were unrentable because of this and I award the landlord additional **\$1,450.00** as compensation.

I find the tenants failed to pay the \$30.00 fee for internet for the months of March, April, May and June as agreed to in the tenancy agreement. The landlord is awarded [\$30.00 x 4 (months) = **\$120.00**].

The tenants agreed to pay one third of the utilities on the tenancy agreement. The landlord provided Fortis BC bills for the duration of the tenancy and gave undisputed testimony that the tenants failed to pay them. I find the tenants are obligated to compensate the landlord as follows:

Period	Amount
Feb 16 to Mar 17, 2022	\$285.33

March 17 to April 18, 2022	\$235.65
April 18 to May 16, 2022	\$151.91
May 16 to June 16, 2022	\$104.79
June 16 to July 18, 2022	\$99.25
Total	\$876.93

$$\$876.93 / 3 = \textbf{\$292.31}.$$

Likewise, for BC Hydro, the tenants are to pay as follows:

Period	Amount
Jan 18 to March 17, 2022	\$682.15
March 18 to May 16, 2022	\$393.52
May 17 to July 15, 2022	\$292.24
Total	\$1,367.91

$$\$1,367.91 / 3 = \textbf{\$455.97}.$$

The landlord provided invoices from the city regarding water bills, which the landlord testified the tenants have not paid:

Period	Amount
January 1 to March 31, 2022	\$287.50
April 1 to June 30, 2022	\$332.50
Total	\$620.00

$$\$620.00 / 3 = \textbf{\$206.66}$$

The landlord did not provide any documentary material to support his claim for garbage and recycling at \$14.50 per month. This portion of the landlord's claim is dismissed without leave to reapply.

Section 72(1) of the Act provides that an Arbitrator may award one party recovery of the filing fee from the other party; however, the Act does not provide for recovery of other costs associated with making an Application for Dispute Resolution, gathering evidence,

copying evidence or serving hearing documents. The tenant's application seeking to recover the costs involved in pursuing this claim are dismissed without leave to reapply.

The landlord filed two applications for dispute resolution against the tenant. I find the single application by direct request was sufficient to achieve the orders sought and I award the landlord the recovery of the single filing fee of **\$100.00**. The second application, seeking a monetary order for unpaid rent was already filed and it appears to be redundant to the original direct request application. This filing fee will not be recovered.

The landlord continues to hold the tenants' security deposit in the amount of **(\$1,450.00)**. In accordance with the offsetting provisions of section 72, the landlord may retain the tenants' security deposit in partial satisfaction of the monetary order.

Item	Amount
May, June rent	\$2,900.00
Loss of rent for July, 2022	\$1,450.00
Internet from March 1 to June 30	\$120.00
Fortis BC	\$292.31
BC Hydro	\$455.97
City water bill	\$206.66
Filing fee	\$100.00
Less security deposit	(\$1,450.00)
subtotal	\$4,074.94

Conclusion

The tenancy ended on July 2, 2022 pursuant to section 44(1)(f).

The landlord is entitled to a monetary order in the amount of \$4,074.94 pursuant to section 67 of the Act.

The landlord's application seeking compensation for damages to the rental unit is dismissed with leave to reapply.

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 08, 2022