



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDL, MNDCL, FFL

Introduction

This hearing was convened by way of conference call on October 26, 2022, having been adjourned at the request of the landlord on October 13, 2022, concerning an application made by the landlord seeking the following relief:

- a monetary order for unpaid rent or utilities;
- a monetary order for damage to the rental unit or property;
- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and
- to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant attended the hearing on both scheduled dates, and each gave affirmed testimony. The parties each called 1 witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses and to give submissions.

The landlord had indicated that evidence was provided to the Residential Tenancy Branch, but was not uploaded to the automated system. The tenant had indicated at the first day of the hearing that the landlord's evidence had been received. I adjourned the hearing to permit the landlord to ensure that the evidence was uploaded. Some evidence had been uploaded prior to the commencement of the second day of the hearing, however the landlord believes some was missing. The hearing continued in any event, and the landlord agreed that all of the tenant's evidence had been received. All evidence that I have before me has been reviewed, and all evidence relevant to the application of the landlord is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent?

- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that the landlord purchased the rental property on March 14, 2021 and the tenant was residing in the rental unit at that time. Rent in the amount of \$3,300.00 was payable on the 1st day of each month. The landlord did not receive a security deposit or a pet damage deposit from the tenant or from the previous owner, and none appeared in the Statement of Adjustments.

The landlord had served a One Month Notice to End Tenancy for Cause in 2021 for repeated late rent, which was disputed by the tenant and a hearing was scheduled for January, 2022. However, the hearing did not proceed because the tenant vacated the rental unit at the beginning of November, 2021. The landlord did not know the tenant moved out until November 3, 2021 and didn't get the key for the house until November 7, 2021. The tenant did not pay any rent for October or November, and the landlord emailed the tenant a few times, but was ignored completely. On November 3, 2021 the landlord emailed the tenant reminding of rent due, but the tenant replied saying that she was evicted prior to October 31. The landlord claims \$6,600.00 for October and November rent.

After the landlord cleaned and painted the rental unit, it was advertised for rent in December, 2021 on a local website, and was re-rented effective January 1, 2022. The advertisement ran for maybe a couple of weeks, however prior to that the landlord was communicating with a person in charge of finding rentals for hospital workers.

The landlord further testified that the tenant removed shower doors from the bathroom of the rental unit. The landlord had visited after taking possession and the glass doors were there, but were not there at the end of the tenancy.

A pot rack was also missing at the end of the tenancy.

The application shows that the landlord claims \$600.00 for replacement of the bathtub glass doors, \$300.00 for the pot hanger and \$300.00 for overuse of water.

The landlord's witness testified that a tap was loose in the bathtub so he repaired it, and had to climb around the glass doors to complete the repair.

The witness also saw a pot rack in the kitchen and was in the photographs on the seller's listing.

The witness left a voice mail message for the tenant, and the tenant replied on November 7 about getting the keys to the rental property. The landlord had been there with another friend some time in the summer and left keys in the house, and it took some doing to get a key when it was purchased, and even then only got 1 key. The witness does not know why the seller didn't provide all of the keys, except that the seller said that people in the community don't lock their doors.

The tenant agrees that the landlord should get rent for October, 2021. However, since the landlord gave a notice to end the tenancy the tenant believed that the tenant was not required to also give a notice to end the tenancy, and seeks compassion and understanding today.

The previous owner agreed that the tenant could remove the bathtub glass doors and put up a shower curtain.

The tenant had some renovations done at the tenants' spa, and the previous owner of the rental home wanted doors that the tenant had brought home. The previous owner also owns a door company and the parties traded the doors for the pot rack. He was already selling.

The tenant's witness is the tenant's adult daughter who testified that after receiving a 30 day eviction notice, the roommates decided that they were done dealing with the stress of a new landlord and moved out. At the end of October the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and the tenant and witness decided to fulfill the landlord's wishes, alleviate stress and moved. Due to Hallowe'en, the tenant couldn't get a truck until November 1, 2021 to remove the furniture.

The witness also testified that glass doors were in the bathroom until probably early 2020. The previous owner had expressed that the tenant was allowed to take them out and they were moved outside, leaning against the witness' studio suite or a shed and stayed there until they moved out.

The previous owner also had a door company, and the witness was present when doors were removed from the tenant's spa to a storage space in the house.

Analysis

Firstly, the law states that a tenant must pay rent when it is due. The tenant does not dispute the unpaid rent, but seeks compassion regarding November's rent. The landlord is entitled to recover both months of rent because the landlord could not re-rent or advertise the rental unit for rent while the tenant resided there. The tenant disputed the first notice to end the tenancy, but moved out prior to the hearing. Since the tenant did not give the landlord any notice of her intention to vacate, the landlord is entitled to recover November's rent as well. Therefore, I find that the landlord has established \$6,600.00 for unpaid rent.

Where a party makes a monetary claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

In this case, the landlord claims "ball-park" figures of \$600.00 for the shower doors, \$300.00 for the pot hanger and \$300.00 for overuse of water, but has not provided any evidence of the costs to replace either of the items or any overuse of water. I find that the landlord has failed to satisfy element 3 in the test for damages and I dismiss those claims.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

I grant a monetary order in favour of the landlord as against the tenant in the amount of \$6,700.00. The tenant must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$6,700.00.

This order is final and binding and may be enforced.

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: October 26, 2022

Residential Tenancy Branch