



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SOUTH ISLAND PROPERTY MANAGEMENT LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order of \$4,180.64 for damage or compensation for damage under the Act; for compensation for monetary loss or other money owed of \$2,553.85, retaining the security deposit to apply to these claims; and to recover their \$100.00 Application filing fee.

An agent for the Landlord, J.H. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 25 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord's Agent, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

I explained the hearing process to the Agent and gave her an opportunity to ask questions about it. During the hearing the Agent was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that she served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on March 11, 2022. The Agent provided a Canada Post tracking number as evidence of service. The Agent also said that the Tenant left

her a voicemail saying that he did not intend to attend the RTB hearing, because he wants the Landlord to apply for a remedy at the BC Supreme Court. The Agent said the Tenant also said he believes the RTB is biased and will not allow witnesses. For the Tenant's information, you are allowed to bring witnesses to speak at RTB teleconference hearings. The Agent said that she reminded the Tenant of the RTB hearing three days prior to it; however, the Tenants chose not to attend.

Based on the evidence before me overall in this matter, I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Agent in the absence of the Tenant.

Preliminary and Procedural Matters

The Agent provided the Landlord's email address in the Application and she confirmed it in the hearing. The Agent said she did not have an email address for the Tenant or his father, whom the Agent said has a power of attorney for this son, the Tenant. The father, K.D., is also named as a Party in this Application. As such, I advised the Agent that the Decision would be emailed to the Landlord and mailed to the Tenant, and that any Orders would be sent to the appropriate Party in this manner.

At the outset of the hearing, I advised the Agent that pursuant to Rule 7.4, I would only consider the Landlord's written or documentary evidence to which the Agent pointed or directed me in the hearing. I also advised the Agent that she is not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Agent confirmed the details of the tenancy agreement, that the fixed term tenancy began on August 1, 2007, ran to July 31, 2008, and then operated on a periodic basis. The Agent advised that the Tenant is required to pay the Landlord a current monthly rent of \$2,098.00, due on the first day of each month. The Agent said the Tenant paid the Landlord a security deposit of \$800.00, and no pet damage deposit. The Agent confirmed that the Landlord has retained the security deposit to apply to the claims in

the Landlord's Application.

The Agent said that the Landlord obtained an order of possession from the RTB for the residential property, but that the Tenant would not leave. The Agent said that accordingly, the Landlord had to obtain a Writ of Possession from the B.C. Supreme Court and hire a bailiff to remove the Tenant and his personal property from the rental unit. The Agent said that the residential property was sold, so it has a new owner.

The Agent submitted a monetary order worksheet setting out the Landlord's claims in this Application, as follows:

	Receipt/Estimate From	For	Amount
1	Law courts	Order and Writ of Possession	\$126.00
2	Civil enforcement company	Bailiff fees to remove Tenant & his property	\$4,054.64
3	[U.C.] Cleaners	Cleaning, dump fees	\$2,343.85
4	[B.] Plumber	Unclog toilets	\$210.00
		Total monetary claim	\$6,734.49

I also note that at the beginning of her testimony, that the Agent said the Tenant has a credit in his account of \$2,721.73, in addition to his \$800.00 security deposit, both of which will reduce the amount claimed by and awarded to the Landlord.

#1 CIVIL ENFORCEMENT ACTION → \$4,054.64

In the hearing, the Agent explained this claim is for a bailiff's company to remove the Tenants and their personal property from the rental unit. The Agent submitted an invoice, which indicated that two bailiffs spent 8 hours each accomplishing these tasks at \$70.00 an hour. They also included a number of disbursements and other costs, like obtaining and cataloguing the Writ of Possession and hiring a moving company to remove and store the Tenants' personal property. The total charge for these services was \$4,054.64, which was paid by the Landlord.

#2 COMPENSATION FOR DAMAGE → \$2,553.85

A. [U.C.] CLEANERS → \$2,343.85

The Landlord's first claim under this category was for cleaning costs they incurred in preparing the rental unit for the next tenants. The Agent said:

We didn't charge for damage, per say, because the person bought [the residential property] as is, because Tenant wouldn't allow them in to see it.

Almost all the cleaning was done after the bailiff moved stuff out. The Tenants dropped a moving bin on the lawn, which tore up the lawn. The disposal fee, re-leveling the lawn, disposal fees, basically the bailiffs will take everything they can sell at auction, but there are things they won't take, like barbecues. There was a riding lawn mower, two old cars.

The Landlord submitted an invoice from a cleaning company, which detailed having cleaned for 33.5 hours at \$40.00 an hour for a total of \$1,340.00. This activity included three cleaners removing items and garbage from the property in preparation for loading a rented truck.

Another set of cleaners then attended to assist with hauling items away and cleaning the property. The invoice said: "Garbage and items removed from the property items that could be donated were donated."

They indicated that both bathrooms were cleaned, although, they could not flush the toilets, because they were clogged with paper towel and human waste.

Other activities by this company included re-leveling and re-seeding the lawn after heavy tire tracks a foot deep went through it.

The total amount charged by this company was **\$2,343.85**.

B. [B.] PLUMBING → \$210.00

The Agent explained the need for a plumber, as being because the Tenants "...put too much stuff down the toilet before they left. See the invoice for \$210.00. The toilets were used for several days after they were blocked."

The Landlord submitted an invoice from this company that described the work done, as:

Toilets

Incredibly blocked toilets, toilets were used for several days even after they were blocked with paper and organic materials. Excess waste filled both toilets.

The plumber charged \$200.00, plus \$10.00 GST.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Agent testified, I let her know how I analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. RTB Policy Guideline #16 ("PG #16"), sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

("Test")

Section 67 of the Act allows for an arbitrator to determine the amount of compensation to be awarded to a party if another party has not complied with the Act, the regulations, or a tenancy agreement.

#1 CIVIL ENFORCEMENT ACTION → \$4,054.64

In terms of the bailiff fees, which I find were incurred by the Landlord, I accept the Agent's undisputed evidence that the Landlord had to pay the bailiff company \$4,054.64 to obtain and enforce a Writ of Possession of the rental unit. Accordingly, I **award the Landlord with \$4,054.64** from the Tenants pursuant to section 67 and PG #16.

#2 COMPENSATION FOR DAMAGE → \$2,553.85

A. [U.C.] CLEANERS → \$2,343.85

B. [B.] PLUMBING → \$210.00

Based on the undisputed evidence before me, I find that the Landlord has provided sufficient evidence to meet their burden of proof in this matter on a balance of probabilities. I, therefore, **award the Landlord** with **\$2,553.85** from the Tenants for these claims, pursuant to section 67 of the Act.

Summary and Offset

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenants' \$800.00 security deposit in partial satisfaction of the Landlord's monetary awards. I authorize the Landlord to retain the Tenants' \$800.00 security deposit in partial satisfaction of the monetary awards.

The Landlord has been awarded:

\$4,054.64 for emptying the rental unit of the Tenants & their property;

\$2,343.85 for cleaning and disposal of garbage;

\$ 210.00 for plumbing services.

\$6,608.49 **Total awarded**

(\$2,721.73) Less Tenant's credit

\$3,886.76 Net amount owing to the Landlord

Given their success in the Application, I also award the Landlord with recovery of their **\$100.00** Application filing fee from the Tenants, pursuant to section 72 of the Act, for a total award of **\$3,986.76**

I authorize the Landlord to retain the Tenants' **\$800.00** security deposit in partial satisfaction of the monetary awards, pursuant to section 72 of the Act.

I grant the Landlord a **Monetary Order** of **\$3,186.76** from the Tenants for the remaining awards owing, pursuant to section 67 of the Act.

Conclusion

The Landlord is successful in their Application, as they provided sufficient evidence to meet their burden of proof on a balance of probabilities.

The Landlord is awarded **\$6,608.49** for their claims, as well as recovery of their **\$100.00** Application filing fee from the Tenants.

The Landlord is authorized to retain the Tenants' **\$800.00** security deposit in partial satisfaction of the monetary awards. The Landlord must also deduct the **\$2,721.73** credit on the Tenant's account from the total awarded, which sums to the Monetary Order granted to the Landlord below.

I grant the Landlord a **Monetary Order** of **\$3,186.76** from the Tenants for the remainder of the awards owing to the Landlord.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: November 15, 2022

Residential Tenancy Branch