



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLINE LIVING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNRL-S, MNDCL-S, FFL**

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on March 11, 2022 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent;
- a monetary order for damage, compensation, or loss;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Landlord's Agent and the Tenant attended the hearing at the appointed date and time. At the start of the hearing, the Tenant confirmed that he received the Landlord's Notice of Hearing and documentary evidence package. As such, I find these documents were sufficiently served pursuant to Section 71 of the Act.

The Tenant provided some documentary evidence to the Residential Tenancy Branch in response to the Application, however, the Tenant confirmed that he did not provide a copy of his evidence to the Landlord.

Preliminary Matters

Section 88 of the Act stipulates that documents such as evidence must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;

- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served; or
- (i) as ordered by an Arbitrator

According to the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”), 3.16 Respondent’s proof of service indicates; at the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure.

Rules of Procedure 3.17 indicates that evidence not provided to the other party in accordance with the *Act*, may or may not be considered during the hearing. I accept that the Tenant did not serve the Landlord; therefore the only evidence I will consider from the Tenant is their oral testimony during the hearing.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage compensation or loss, pursuant to Section 67 of the *Act*?

2. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to retaining the security deposit, pursuant to Section 38, and 72 of the *Act*?
4. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the fixed term tenancy began on August 1, 2021. During the tenancy, the Tenant was required to pay rent in the amount of \$1,425.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$712.50 which the Landlord continues to hold. The parties agreed that the Tenant provided his notice to end the tenancy early, and vacated the rental unit on March 5, 2022.

The Landlord's Agent stated that the Landlord found a new occupant to occupy the rental unit as of March 15, 2022. The parties agreed that the Tenant did not pay rent for the month of March 2022 to the Landlord. As such, the Landlord has suffered a loss of rent equivalent to half a month of rent. During the hearing, the Tenant agreed that the Landlord is entitled to compensation equivalent to half a month of rent and is permitted to retain the Tenant's deposit in the amount of \$712.50.

The Landlord is claiming \$80.00 for cleaning the rental unit and \$80.00 for repairing damage to a wall. The Landlord referred to the move out condition inspection report which was acknowledged by both parties in support. During the hearing, the Tenant acknowledged that the Landlord is entitled to compensation in the amount of \$80.00 for cleaning and \$80.00 for wall repair.

The Landlord is claiming for the return of the \$100.00 filing fee paid to make the Application. The Tenant did not consent to compensating the Landlord this amount.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

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

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

The Landlord is claiming a loss of half a months' rent in the amount of \$712.50. I accept that during the hearing, the Tenant consented to compensating the Landlord this amount, therefore, I find that the Landlord is entitled to compensation in the amount of **\$712.50**.

The Landlord is also claiming \$80.00 for cleaning and \$80.00 for wall repair. I accept that during the hearing, the Tenant consented to compensating the Landlord these amounts, therefore, I find that Landlord is entitled to compensation in the amount of **\$160.00**.

Having been successful and the fact that the Landlord's Application was necessary to recover their losses, I find the Landlord is entitled to recover the **\$100.00** filing fee paid to make the Application. I also find it appropriate in the circumstances to order that the Landlord retain the security deposit in the amount of \$712.50 in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$260.00 which has been calculated below;

Claim	Amount
Unpaid rent:	\$712.50
Wall Repair/Cleaning:	\$160.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-\$712.50
TOTAL:	\$260.00

Conclusion

The Landlord has established an entitlement to monetary compensation and has been provided with a monetary order in the amount of **\$260.00**. The order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: November 08, 2022

Residential Tenancy Branch