



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FF

Introduction and Preliminary and Procedural Matters-

This hearing convened by teleconference on June 7, 2022, to deal with the landlord's application (application) for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for compensation for a monetary loss or other money owed and recovery of the cost of the filing fee.

The landlord and the tenant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The hearing continued for 36 minutes, at which time the hearing was adjourned due to the length of time taken for discussion of evidence issues. An Interim Decision was issued on June 9, 2022, which is incorporated by reference and should be read in conjunction with this Decision. In that Interim Decision, I made the following orders, in part, as follows:

I ORDER the landlord to serve and submit all original evidence in one package so that it is received by the tenant and the Residential Tenancy Branch (RTB) at least 28 days prior to the adjourned hearing.

I ORDER the tenant to serve her evidence all in one package to the landlord so that it is received by the landlord and the RTB at least 21 days prior to the adjourned hearing.

I ORDER the parties to comply with Residential Tenancy Branch Rules of Procedure (Rules) 3.7, which requires evidence to be organized, clear and legible. It is strongly recommended that there be a table of contents or index

included with their evidence, to ensure the organization of the evidence for ease of reference at the hearing.

At the reconvened hearing, the landlord and the tenant attended. There were again evidence issues.

Despite these orders, the landlord/applicant dropped off his evidence to an RTB office on October 5, 2022 for the hearing on October 11, 2022 and sent their evidence to the tenant on October 5, 2022. As the landlord/applicant failed to comply with the Orders in the Interim Decision the evidence from the landlord/applicant is excluded.

Thereafter the parties were provided the opportunity to present their evidence orally and make submissions to me.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant and recovery of the cost of the filing fee?

Background and Evidence

The landlord said that this tenancy began on March 30, 2019 and that the tenant was removed on July 30, 2021 by a bailiff, per an order of possession of the rental unit issued to the landlord on May 4, 2021.

The monthly rent was \$1,500 and the tenant paid a security deposit and pet damage deposit of \$750 each, both having been retained by the landlord for use in this claim.

The landlord's application filed on October 29, 2021, listed 3 three separate claims. The first part of the claim is \$1,726.88. This is for the rent of \$1,500 for August 2021, the month after the tenant was evicted and \$226.88 for a rent deficiency.

The second part of the claim is \$1,955.47. The landlord wrote on the application various issues with the state of the rental unit after the tenancy ended.

The third part of the claim is listed as \$1,986.47. In the section in the application within the description of damages, incurred costs and attempts at compensation, the landlord wrote the claim was based on a Supreme Court filing fee of \$120 and bailiff costs of \$1,721.23, for a total of \$1,841.23. No explanation was given as to why the claim was \$1,986.47.

Claim #1, unpaid rent for August 2021 and outstanding rent –

The landlord said that the tenant started accumulating rent deficiencies starting in April 2020. The evidence showed that the landlord applied to the RTB under the direct request process seeking an order of possession of the rental unit and a monetary order for unpaid rent. The landlord was granted a monetary order for unpaid rent for March and April 2021 in the amount of \$1,630 and an order of possession, dated May 4, 2021, effective 2 days after service.

At the hearing, the landlord said his claim for unpaid rent now is \$1,500 for August 2021, due to the state of the rental unit after the tenant was evicted, which required cleaning and repairs.

The landlord said the amount of \$226.88 was the amount of outstanding after the Small Claims court hearing.

Claim #2, damages to the rental unit –

The landlord said the rental unit was left as a "complete disaster". The landlord submitted that lights were burnt out, the stove was not fully working, and dishes and food were left in the kitchen. The landlord submitted that there were scratches on the

walls, along with nails and screws and pet damage. The landlord submitted that the tenant left garbage.

The landlord submitted he is claiming for his labour in repairing the damages and cleaning the rental unit, along with having to replace parts and purchase paint. The claim for labour is \$1,700.

Claim # 3, compensation for a monetary loss or other money owed –

The landlord submitted that the tenant failed to vacate the rental unit and as a result, the landlord ultimately had to hire a bailiff to have the tenant removed. The landlord submitted that he filled out the paperwork for the Supreme Court on July 27, 2021, for the writ of possession. The landlord claims the bailiff fee and the filing fee.

Tenant's response –

The tenant explained that she works out of province and is away at camp for long periods of time. The tenant said the landlord waited until she left home for camp, on May 2, 2021, to serve the order of possession. The tenant submitted she did not get the order of possession because she was away. The tenant said that the landlord received the rent for May 2021, and this was submitted at the Small Claims hearing. The tenant said that if the rent had not been paid, the bailiff would have removed her in May 2021.

The tenant said she had been home for 10 days prior to the bailiff coming to remove her, but she had been talking to the landlord and everything was fine. The tenant said the landlord knew the rent would be caught up.

The tenant said that the stove had not been working for 2 years and denied the rental unit was a disaster. The tenant said that the bailiff came unexpectedly and removed her belongings and therefore had no chance to clean up before being removed.

The tenant said that the mold in the rental unit prior to her eviction was so bad she got to the point that she could not open the door. The tenant said that the black mold got so bad she had to throw away her bedroom furniture.

The tenant said that the landlord waited until she left for camp on May 2, 2021, before serving the order of possession and she did not know anything about it. The tenant said

that the landlord texted her on May 6, 2021 about the May 2021 rent not being paid. The tenant submitted that she was told that if rent was not paid by May 12, 2021, the bailiff would be out to evict her. The tenant submitted that the May rent was paid and the landlord continued to accept the monthly rent. When she returned on July 12, 2021, the tenant submitted that she believed everything was fine with the landlord.

As to claim #2, the tenant submitted that she lived there for 2 ½ years and painting is normal after a tenancy that long. The landlord was advised about the door and stove not working. Additionally, the tenant submitted that she was given no head's up about the bailiff coming to remove her and was not given time to clean up.

As to claim #3, the tenant submitted that she was completely blindsided by the bailiff coming to remove her and her personal property. The tenant said that she now knows that the landlord can use an old order to evict her, as she was up to date with rent and at work as she left for camp on July 15, 2021.

The landlord rebutted the tenant's testimony and evidence by saying that the tenant should have talked to him honestly. The landlord submitted that the tenant's son was always so disrespectful to him. The landlord submitted that he fixed the tenant's light bulbs and stove, however, the tenant was always complaining.

The tenant responded and said that the landlord received a benefits cheque of \$385 for her son, and that amount should be deducted from any claim. The landlord denied receiving the cheque.

Analysis

Test for damages or loss

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 in sections 7 and 67 of the Act. Accordingly, an applicant must prove each of 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 whatever was reasonable to minimize the damage or loss.

[emphasis added]

In this instance, the burden of proof is on the landlord to prove the existence of the damage/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 whatever was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In these matters, I find a primary consideration is whether the landlord did whatever was reasonable to minimize the damage or loss. I find the majority, if not all, of the landlord's claim stems around whether the landlord complied with this section of the Act.

The landlord was issued an order of possession of the rental unit for the rental unit on May 4, 2021, and a monetary order for unpaid rent for April and May 2021 in the amount of 1,630.

The tenant stated she had paid all rent due and had been paying the monthly rent after the date of the order of possession and June and July's monthly rent and believed she and the landlord were fine. This is supported by the landlord's confirmation that there was no claim for unpaid rent through July 2021. The landlord's claim is for a loss of rent for August 2021, due to the state of the rental unit.

For this reason, I find the landlord has been accepting the tenant's rent payments even after being issued the order of possession and that the tenant had fully paid the monthly rent through July 2021. The claim of \$226.88 was a matter dealt with at the Small Claims division of the Provincial Court and I therefore find this matter was dealt with in another legal venue and I cannot re-decide this issue.

In looking to Tenancy Policy Guideline 11, there are ways in which a landlord can reinstate or continue a tenancy. One way is through implied consent. This Policy Guideline provides the following:

Implied waiver happens when a landlord and tenant agree to continue a tenancy, but without a clear and unequivocal expression of intent. Instead, the waiver is implied through the actions or behaviour of the landlord or tenant.

In this case, I find that there is sufficient evidence to show that the landlord gave implied consent for the continuation of the tenancy. The landlord received an order of possession of the rental unit on May 4, 2021, effective two days after service, and yet, did not apply to the Supreme Court for a writ of possession until July 27, 2021, almost 3 full months after the order of possession was issued, and after receiving the monthly rent from the tenant through July 2021.

I also find sufficient evidence that the landlord failed to serve the order of possession of the rental unit until after the tenant left for an out-of-town camp and the tenant was unaware of the order being served.

I find it reasonable that the tenant believed the tenancy was continuing and would be unaware that the landlord would attempt to enforce the May 4, 2021, order of possession nearly 3 full months after it was issued and she had been paying rent. For this reason, I accept that the tenant did not know to remove her belongings and personal property and to properly clean the rental unit and make any repairs that were from damage beyond reasonable wear and tear. I find the tenant must be afforded the opportunity to do so, if the tenancy was continuing.

I find that the landlord failed to do whatever was reasonable to minimize the damage or loss when he failed to enforce the order of possession in a timely manner. I find another way in which the landlord could do whatever was reasonable after continuing to accept the monthly rent was to at least inform the tenant he was still going to apply for a writ of possession so that she could remove her personal property and properly clean the rental unit and make any repairs that were necessary, if any, for damage beyond reasonable wear and tear.

Taken in totality, I find the evidence shows that the landlord failed to take all reasonable steps to minimize the loss.

While a landlord does not have to warn a tenant they intend to enforce an order of possession under most circumstances, I find the circumstances here are different. As referenced, the landlord continued to accept rent for 3 months before seeking a writ of

possession. It was also not clear if the tenant received the order of possession as she had gone out of town for camp before it was served. I find the evidence shows that the landlord was aware that the tenant was away for long periods of time for employment purposes. I therefore find that the tenant was given an insufficient opportunity to remove her personal property and vacate and repair any damage beyond reasonable wear and tear before the bailiff evicted the tenant.

For this reason, I dismiss the landlord's claim for the loss of rent revenue of \$1,500 for August 2021, without leave to reapply. I also dismiss the landlord's request for \$266.88, as this matter was addressed in the Small Claims court.

I also dismiss the landlord's claim for repairs, cleaning, labour, and garbage removal in the amount of \$1,955.47, without leave to reapply.

I also dismiss the landlord's claim for the bailiff fee and filing fee, as the landlord's actions show that the landlord had continued the tenancy through implied consent. Apart from that, the claim amounts were inconsistent.

As I have dismissed each separate claim of the landlord, without leave to reapply, I dismiss the landlord's application in full, without leave to reapply.

As I have dismissed the landlord's monetary claim against the tenant, pursuant to section 62(3) of the Act, I order the landlord to return the tenant's security deposit of \$750 and pet damage deposit of \$750, immediately.

To give effect to this order, I issue the tenant a monetary order (Order) pursuant to section 67 of the Act for the amount \$1,500.

Should the landlord fail to pay the tenant this amount without delay, the Order must be served upon the landlord for enforcement, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord's application is dismissed, without leave to reapply.

The landlord is ordered to return the tenant's security deposit of \$750 and pet damage deposit of \$750, immediately, and the tenant is issued a monetary order in the amount of those deposits in the amount of \$1,500, in the event the landlord does not comply with this order.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: November 7, 2022

Residential Tenancy Branch