



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for a monetary order in the amount of \$12,849.44 for compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlord and counsel for the landlord, MG (counsel) attended the teleconference hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing. All parties, except counsel were affirmed. Counsel was not affirmed as counsel confirmed that they have been called to the BC Bar and as such, have already sworn an oath. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing dated March 29, 2022 (Notice of Hearing), application and documentary evidence (Hearing Package) were considered. Counsel submitted that the tenant was served with the Hearing Package by registered mail. The registered mail tracking number was provided and has been included on the cover page of this Decision for ease of reference. According to the Canada Post registered mail tracking website, the Hearing Package was successfully delivered on March 30, 2022. Based on the evidence before me, I find the tenant was served with the Hearing Package on March 30, 2022, the date they signed for the Hearing Package.

Counsel clarified that the service address used for the tenant, was the same address as supplied by the tenant in the Previous Decision. The file number of the Previous Decision has been included on the cover page of this Decision for ease of reference.

Preliminary and Procedural Matter

Counsel confirmed the email address for counsel and the tenant. As a result, the Decision will be emailed to counsel and the tenant.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- If yes, is the landlord entitled to recover the filing fee under the Act?

Background and Evidence

The landlord writes in their application that they seek to recover their costs related to obtaining a Writ of Possession, enforcing the Writ of Possession by hiring a Court Bailiff. During the hearing, counsel presented the landlord's evidence which includes a Statement of Account dated February 18, 2021 (Statement of Account). The following costs were confirmed by counsel and listed on the Statement of Account:

1. Legal fees for counsel including taxes = **\$3,360**
2. Disbursements plus tax (including court application fee, agent fee, bailiff costs including movers for the tenant's belongings, Writ of Possession fee, and other related costs including taxes = \$8,961.09 (actual invoice shows **\$9,389.44 after tax**)
3. Filing fee = **\$100**

TOTAL = \$12,418.06

In addition to the above, counsel presented a letter from the Court Bailiff dated February 18, 2021 (Letter). In the Letter, the Court Bailiff explains what was done and given the volume of items the tenant had on the property, that the costs were going to be higher than originally anticipated.

Analysis

Based on the undisputed documentary evidence, the undisputed submissions by counsel, and on the balance of probabilities, I find the following.

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 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 is reasonable to minimize the damage or loss.

Legal fees – The landlord has claimed **\$3,360** for the cost to hire counsel and have counsel represent the landlord with the application for and the enforcement of a Writ of Possession. I find that hiring counsel was a business decision made by the landlord and that the tenant is not liable for the costs of those legal fees. An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act, but “costs” incurred with respect to filing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Act. As a result, the claim for legal costs is dismissed without leave to reapply as I find that hiring counsel is a business decision of the landlord and is an expense for which the tenant is not liable.

Court Bailiff, Writ of Possession application and enforcement costs – I have carefully reviewed the invoice submitted for my consideration and I find that due to the tenant failing to comply with the Order of Possession, that the tenant is liable for the costs related to the application for and the enforcement of the Writ of Possession, which is through the Supreme Court. Therefore, I find the landlord has met the burden of proof and that the tenant owes the landlord **\$9,389.44** for this portion of the landlord’s claim.

As the landlord’s application was mostly successful, I grant the landlord the recovery of the filing fee in the amount of **\$100**, pursuant to section 72 of the Act.

Monetary Order – I find that the landlord has established a total monetary claim in the amount of \$9,489.44 comprised of \$9,389.44 for item 2 plus the \$100 filing fee. I grant the landlord a monetary order pursuant to section 67 in the amount of **\$9,489.44**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The landlord's application was mostly successful.

The landlord has been granted a monetary order pursuant to section 67 in the amount of \$9,489.44. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This Decision will be emailed to both the tenant and counsel. The monetary order will be emailed to counsel only for service on the tenant.

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 21, 2022

Residential Tenancy Branch