



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1187784 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord April 15, 2022 (the "Application"). The Landlord applied as follows:

- To recover unpaid rent
- To keep the security and/or pet damage deposit
- For reimbursement for the filing fee

The Agent for the Landlord appeared at the hearing. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Agent. I told the Agent they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The Agent provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord's evidence.

The Agent testified that they applied for substituted service and served the Tenant by email. The substituted service decision was issued May 04, 2022, and states at page three:

For this reason, I allow the landlord substituted service of the Notice of Dispute Resolution Proceeding, with supporting documents and written evidence, by e-mail to the tenant at the e-mail address indicated on the first page of this decision.

I order the landlord to provide proof of service of the e-mail which may include a printout of the sent item, a confirmation of delivery receipt, or other

documentation to confirm the landlord has served the tenant in accordance with this order. If possible, the landlord should provide a read receipt confirming the e-mail was opened and viewed by the tenant. (emphasis added)

The Landlord had not submitted any proof of service and I asked the Agent about this. The Agent said they did not know they had to submit proof of service. I gave the Agent five minutes in the hearing to upload proof of service through the RTB website. The Agent did upload an email showing the hearing package and Landlord's evidence, other than the tenancy agreement, were sent to the Tenant by email as allowed in the substituted service decision. The email is dated May 06, 2022, and the Agent confirmed this is when the email was sent.

I find the Landlord served the Tenant as allowed in the substituted service decision and therefore, pursuant to that decision, I find the Tenant sufficiently served May 09, 2022.

The Agent testified that the pet damage deposit has been returned and therefore I have not dealt with the pet damage deposit.

The Landlord seeks \$213.00 for cleaning fees in the Application which is not rent and should have been applied for under a different ground. However, I find the Application description clear that the Landlord is seeking this and therefore have considered it.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to recover the cleaning fee?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Half of March rent	\$850.00
2	Cleaning fee	\$213.00
3	Filing fee	\$100.00
	TOTAL	\$1,163.00

The Landlord submitted a written tenancy agreement. The tenancy started October 01, 2021. Rent was \$1,700.00 due on the first day of each month. An \$850.00 security deposit was paid. I note that there were two tenants living in the rental unit, M.N. and the Tenant. The tenants were co-tenants.

The Agent testified as follows.

The tenancy ended March 31, 2022.

Neither of the tenants provided the Landlord with a forwarding address.

M.N. agreed to half the security deposit being kept towards unpaid rent; however, the Landlord is not relying on this at the hearing.

The parties did a move-in inspection together and a Condition Inspection Report ("CIR") was completed.

M.N. attended the rental unit at the end of the tenancy to return keys. The Tenant did not attend. No move-out inspection was done. No CIR was completed. The tenants were not given two opportunities, one on the RTB form, to do a move-out inspection.

The tenants failed to pay half of March rent being \$850.00. The tenants did not have authority under the *Act* to withhold this rent.

The tenants left a bunch of garbage in the rental unit at the end of the tenancy. The tenants had not cleaned areas of the rental unit such as the cupboards at the end of the tenancy. The Landlord hired a cleaning company to clean the rental unit. The invoice for cleaning is in evidence.

Analysis

Security deposit

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to security deposits if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with security deposits at the end of a tenancy.

Based on the undisputed testimony of the Agent about move-in and move-out inspections, I find the tenants did not extinguish their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act* because extinguishment only relates to claims that are solely for damage to the rental unit and the Landlord has claimed for unpaid rent.

I accept the undisputed testimony of the Agent that the tenancy ended March 31, 2022.

I accept the undisputed testimony of the Agent that the tenants never provided the Landlord with a forwarding address.

Section 38(1) of the *Act* addresses return of security deposits and is only triggered when tenants have provided their landlord with a forwarding address in writing. Here, section 38(1) of the *Act* has not been triggered and the Landlord was allowed to claim against the security deposit when the Application was filed.

Compensation

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 26 of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 37 of the *Act* states:

(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I find based on the written tenancy agreement that the tenants owed \$1,700.00 in rent each month. I accept the undisputed testimony of the Agent that the tenants failed to pay half of March rent being \$850.00. I accept the undisputed testimony of the Agent that the tenants did not have authority under the *Act* to withhold this rent. I award the Landlord \$850.00 for unpaid rent.

I accept the undisputed testimony of the Agent that the tenants did not leave the rental unit reasonably clean at the end of the tenancy and therefore breached section 37 of the *Act*. I accept that the Landlord had to hire a cleaning company and I accept this cost \$425.00 based on the invoice. Although I find \$425.00 to be high, I am satisfied this amount is reasonable given the Tenant did not appear at the hearing to dispute this. Further, I note that the Landlord is only seeking \$213.00 for the cleaning which I find to be a reasonable amount. I award the Landlord the \$213.00

Given the Landlord has been successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

Summary

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Half of March rent	\$850.00
2	Cleaning fee	\$213.00
3	Filing fee	\$100.00
	TOTAL	\$1,163.00

Pursuant to section 72(2) of the *Act*, the Landlord can keep the security deposit. The Landlord is issued a Monetary Order for the remaining \$313.00 pursuant to section 67 of the *Act*.

Conclusion

The Landlord can keep the security deposit. The Landlord is issued a Monetary Order for the remaining \$313.00. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 05, 2023

Residential Tenancy Branch