



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL-4M, RR, RP, LRE, FFT
OPR-DR, MNR-DR, FFL
CNR, CNL-4M, RR, RP, LRE, OLC, FFT

Introduction

This hearing dealt with two applications by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a Four Month Notice to End Tenancy for Landlord's use ("Four Month Notice") pursuant to section 49.
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order requiring the landlord to carry out repairs pursuant to section 32;
- An order to restrict or suspend the landlord's right of entry pursuant to section 70;
- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Ten Day Notice") pursuant to section 46;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

This hearing also dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent (“Ten-Day Notice”) pursuant to sections 46 and 55;
- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Service on Tenant

As the tenant did not attend the hearing, I asked the landlord to confirm that the tenant was served with the Notice of Hearing and Application for Dispute Resolution for this hearing.

The landlord testified they sent the documents by registered mail to the tenants on September 9, 2022 mailed to the tenant’s residence, thereby effecting service under section 90 on September 14, 2022. The landlord provided the tracking number for the mailing and submitted copies of the receipts.

Section 15 of Residential Tenancy Policy Guideline #12. Service Provisions explains the requirement for proof of service, as follows, in part:

Where proof of service is required, the person who actually served the documents must either:

- be available as a witness in the hearing to prove service, or
- provide a signed statement with the details of how the documents were served.

As the landlord testified to the date and time of service, the method of service, location of service, and the specifics of the documents served, I find that the landlord has proven service of the Notice of Hearing and Application for Dispute Resolution on the tenant.

As such, I find that the tenant was served with the Notice of Hearing and Application for Dispute Resolution in accordance with sections 88 and 89 of the *Act*.

Attendance of Tenant

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 37 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing – If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.

As the tenant did not attend the hearing and in the absence of any evidence or submissions, I order the tenant's applications dismissed without leave to reapply.

Request for Amendment by Landlord

The landlord requested an amendment to the landlord's application so the landlord is authorized to apply the security deposit and the pet deposit to any monetary award granted pursuant to section 72.

The landlord testified the tenant paid the landlord a security deposit and a pet deposit each in the amount of \$900.00 for a total of \$1,800.00 at the start of the tenancy which the landlord holds. The tenant has not given the landlord permission to apply the security deposit to outstanding rent.

Section 4.2 of the Rules of Procedure provides that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated.

I find the tenant could reasonably anticipate the landlord's claim would be amended to include a request authorizing the landlord to apply the security deposit to a monetary award for outstanding rent. The amendment would not be prejudicial to the respondent.

Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's applications to allow the landlord to request that the security deposit and pet deposit in the total amount of \$1,800.00 be applied to any monetary award.

Withdrawal of Claims by Landlord

The landlord testified the tenant vacated the unit on November 24, 2022 without notice. Accordingly, the landlord withdrew the request for an Order of Possession.

The landlord's claims for an Order of Possession are accordingly dismissed without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

As the tenant did not attend the hearing, the landlord provided uncontradicted testimony. While I have turned my mind to all the documentary evidence and the testimony, not all details of the landlord's submissions and arguments are reproduced here. Only relevant, admissible evidence is considered. The principal aspects of the claim and my findings around each are set out below.

The landlord submitted a comprehensive evidence package supporting the landlord's claims in all aspects.

The landlord submitted a copy of the tenancy agreement and provided the following information about the tenancy.

INFORMATION	DETAILS
Type of Tenancy	Fixed term
Beginning Date	July 1, 2020

Fixed Term End Date	April 30, 2023 (tenancy agreement signed April 22, 2022), submitted
Vacancy Date	November 24, 2022
Rent payable on first of month	\$2,350.00
Security deposit	\$900.00
Pet deposit	\$900.00
Date of Application	September 28, 2022
Arrears of Rent	September 2022 - \$1,800.00 owing, no further rent received
Forwarding Address	Not received
Condition Inspection Report –in	Yes, not submitted
Condition Inspection Report –out	No, tenant vacated without notice

A condition inspection was conducted on moving in. The landlord did not submit the report as evidence. No condition inspection was conducted on moving out. The landlord was not informed of the tenant's moving out date and the tenant did not provide a forwarding address.

Landlord's Claims

The tenant vacated November 24, 2022, without notice and the landlord claimed rent owing from September to December 2022. The landlord testified the following rent remains owing.

ITEM	AMOUNT
September Rent (Partial payment received)	\$1,800.00
October Rent	\$2,350.00
November Rent	\$2,350.00
December Rent	\$2,350.00
TOTAL CLAIMED BY LANDLORD	\$8,850.00

The landlord testified as follows. The tenant left the unit dirty, cluttered and damaged. The yard was rundown, the interior of the 2.5 floor house was damaged and dirty throughout including floor and walls, the kitchen was filthy, possessions and furniture were abandoned, and the unit was damaged from drug and cigarette smoking. The landlord took 4 trailer loads to the dump and incurred corresponding wages, costs and fees all of which were supported by evidence.

The landlord provided invoices and testimony in support of the following claims for compensation:

ITEM	AMOUNT
Furnace repair – unwarranted service call by tenant - invoice 5705	\$120.75
Removal debris, tipping fees - Invoice 1015	\$489.00
cleaning, removal debris, tipping fees, storage of abandoned items - Invoice 1066	\$2,027.00
Tipping fees for garbage, debris – invoice submitted	\$46.00
TOTAL CLAIMED BY LANDLORD	\$2,682.75

The total of the landlord's claims are as follows:

ITEM	AMOUNT
Rent (Above)	\$8,850.00
Compensation (Above)	\$2,682.75
TOTAL	\$11,532.75

The landlord requested the security deposit and pet deposit in the total amount of \$1,800.00 be applied to the monetary award as follows:

ITEM	AMOUNT
Compensation Total	\$11,532.75
(Less deposits)	(\$1,800.00)
TOTAL	\$9,732.75

The landlord also claimed reimbursement of the filing fee of \$100.00 for a total claim of \$9, 832.75.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the respondent party (the tenant) to the tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the applicant (landlord) proven the amount or value of their damage or loss?
4. Has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

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

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

...

67 Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Each of the above four tests are considered in my findings.

I give substantial weight to the landlord's evidence as summarized above. Based on the uncontradicted credible evidence of the landlord, I find the landlord has met the burden of proof on a balance of probabilities with respect to all aspects of the claims.

Rent

I find the landlord has met the burden of proof on a balance of probabilities that the tenant vacated as testified without notice, owed rent as testified, and the landlord is entitled to the amount of rent claimed.

Given the landlord's credible evidence supported in all aspects by documents, I find it reasonable that the unit could not be rented again until substantial cleaning and debris removal had taken place.

I accept the landlord's evidence that the unit was not rentable the month after the tenant vacated while the cleaning and removal of debris occurred.

I find the tenant caused the lack of cleanliness and disrepair in violation of the tenant's obligations under the Act and the tenancy agreement.

I find the landlord mitigated damages by having the work carried out in a timely and efficient manner.

I find, as a result of the tenant's actions, the landlord lost rental revenue in the amount claimed.

I find the landlord has met the burden of proof with respect to all four parts of the 4-part test for the claim under this heading..

I grant the landlord a monetary award under this heading of \$8,850.00.

Compensation – Remainder of Claims

I accept the landlord's credible and convincing testimony and documentary evidence under this heading.

I find the tenant did not leave the unit in a reasonably clean or good condition as required under section 32 and the tenancy agreement.

I find the tenant's breach of the Act caused the landlord to incur the expenses claimed for which the landlord fairly seeks compensation. I find the expenses for cleaning and debris/garbage/furniture removal were necessary.

I accept the landlord's evidence that they made reasonable efforts to mitigate loss and reduce expenses and carried out the work in a timely manner. I accept the landlord's evidence they incurred the time and expenses claimed which were supported by documentary evidence.

I therefore find the landlord is entitled to compensation of the expenses claimed under this heading in the amount \$2,682.75.

Deposits and Filing Fee

As the landlord has been successful in this matter, I award reimbursement of the filing fee of \$100.00.

Further to section 72, I authorize the landlord to apply the deposits of \$1,800.00 to the monetary award.

Summary

I grant a Monetary Order to the landlord of \$9, 832.75 calculated as follows:

ITEM	AMOUNT
Compensation Total	\$11,532.75
Filing fee	\$100.00
(Less deposits)	(\$1,800.00)
TOTAL	\$9,832.75

Conclusion

I grant the landlord a Monetary Order of **\$9,832.75** which must be served on the tenant

This Monetary Order may be filed and enforced in the courts of the Province of BC
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: February 02, 2023

Residential Tenancy Branch