



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes: MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- and a monetary order for money owed or compensation for loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

While the landlord attended the hearing by way of conference call, the tenants did not. I waited until 1:44 p.m. to enable the tenants to participate in this scheduled hearing for 1:30 p.m. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. The landlord confirmed that they understood.

The landlord testified that both tenants were served with the landlord's application for dispute resolution package by way of email on July 28, 2022. The landlord testified that they had used the email address provided by the tenants for service as noted on the tenancy agreement. The landlord provided a copy of the tenancy agreement, and a copy of the email that was sent to the tenants' email on July 28, 2022. In accordance with sections 88, 89 and 90 of the *Act*, I find the tenants deemed served with the landlord's application and evidence on July 31, 2022, three days after the email was sent. The tenants did not submit any written evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for losses and money owed?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence before me and the testimony provided for this hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on January 1, 2022, with monthly rent set at \$1,350.00, payable on the first of the month. The landlord still holds a security deposit of \$675.00. The tenants originally resided in the downstairs suite, and later moved to the upstairs suite. The landlord testified that the tenants moved out on June 30, 2022.

The landlord filed this application to recover the following losses:

| Item | Amount |
|---------------------------------------|-------------------|
| Damaged flooring | \$2,000.00 |
| Unpaid Utilities | 450.00 |
| Filing Fee | 100.00 |
| Total Monetary Order Requested | \$2,550.00 |

The landlord testified that the flooring was brand new and installed right before the tenants moved in. The landlord submitted the receipt for the purchase of the flooring in their evidentiary materials as well as the condition inspection reports. The landlord also submitted photos of the damage. The landlord testified that they had estimate the amount of claimed based on a calculation of \$1.75 per square feet for labour. The landlord testified that they did not have time to submit any estimates or quotes before the hearing.

The landlord also submitted copies of utility bills, and is requesting a monetary order for unpaid utilities for this tenancy. During the hearing, the landlord testified that the correct amount owing should be \$323.23 and not \$450.00 as noted on the application. The landlord submitted in evidence a copy of a Request for utilities dated May 26, 2022 in the amount of \$243.14, which contained the calculation of the outstanding amounts.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenants had caused damage and losses in the amounts claimed in this application.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The party applying for dispute resolution bears the responsibility of demonstrating entitlement to a monetary award. In this case, although I am satisfied that the landlord had provided sufficient evidence to show that the tenants had damaged the flooring, I find that the landlord failed to support the actual value of the loss claimed. Other than the original receipt for the flooring, the landlord did not provide any receipts, estimates, invoices to support the actual losses claimed. I find that the landlord's evidence falls short in supporting the amount of actual monetary loss associated with the damage.

Residential Tenancy Branch ("RTB") Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages.

Based on this principle, I award the landlord nominal damages of \$500.00 for the tenants' failure to leave the home in undamaged condition.

The landlord also filed an application to recover the unpaid utilities for this tenancy. I accept the undisputed evidence of the landlord that the tenants owe \$243.14 in unpaid utilities. The landlord is granted a monetary order for this amount.

As the landlord's application has merit, I allow the landlord to recover the \$100.00 filing fee.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award granted to the landlord. As per the RTB Online Interest Tool found at <http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html>, over the period of this tenancy, \$3.90 is payable as interest on the tenants' security deposit from when the deposit was originally paid, until the date of this decision, April 18, 2023.

Conclusion

I issue a Monetary Order in the amount of **\$164.24** in the landlord's favour for the monetary orders granted in the table below:

| Item | Amount |
|---|-----------------|
| Outstanding utilities | \$243.14 |
| Damaged Flooring Compensation | 500.00 |
| Filing Fee | 100.00 |
| Less Security Deposit Held plus applicable interest | -678.90 |
| Total Monetary Order | \$164.24 |

The landlord is provided with this Order in the above terms and the tenants must be served with a copy of this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: April 18, 2023

Residential Tenancy Branch