

## **DECISION**

**Dispute Codes**      **MNRL, MNDL-S, FFL**

### **Introduction**

This hearing dealt with the Landlords' Application for Dispute Resolution, made on July 19, 2022 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent;
- a monetary order for damage or loss;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on April 17, 2023 as a teleconference hearing. Only the Landlords attended the hearing at the appointed date and time. No one appeared for the Tenant. The conference call line remained open and was monitored for 20 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlords and I were the only persons who had called into this teleconference.

### **Preliminary Matters**

The Landlords had applied for Substituted Service on August 5, 2022 seeking an order to serve the Tenant by email as they had not been provided with the Tenant's forwarding address. In the August 24, 2022 Decision, the Landlord was granted authority to serve the Notice of Hearing, and evidence to the Tenant by email.

The Landlord stated that they emailed the Tenant with the above-mentioned documents on August 5, 2022 and again on August 28, 2022. The Landlord provided a screen shot of the email with attachments in support.

Based on the oral and written submissions of the Applicants, and in accordance with sections 71 of the *Act*, I find that the Tenant was sufficiently served in accordance with the *Act*. Pursuant to Section 90 of the *Act*, the Tenant is deemed to have been served with these documents three days later on August 8, and 31, 2022. I note the Tenant did not provide any evidence in response to the Application.

At the start of the hearing, the Landlords wished to withdraw their monetary claims for damages. As no one attended the hearing for the Tenant, I accepted the withdrawal of the Landlords' claims for damages with leave to reapply. The hearing continued based on the Landlords' claim for loss of rent.

The Landlords were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Are the Landlords entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to retaining the security deposit, pursuant to Section 38, and 72 of the *Act*?
3. Are the Landlords entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

The Landlords testified that the fixed term tenancy began on September 1, 2021 and was meant to continue until August 31, 2022. During the tenancy, the Tenant was required to pay rent in the amount of \$2,400.00 to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$1,200.00 which the Landlords continue to hold. The Landlords stated that the tenancy ended early on July 17, 2022.

The Landlords are claiming for loss of rent in the amount of \$4,800.00. The Landlords stated that the Tenant failed to pay rent in the amount of \$2,400.00 for June 2022 and July 2022. The Landlords stated that they served a 10 Day Notice to the Tenant on July 4, 2022 before the Tenant vacated the rental unit on July 17, 2022. The Landlords provided a copy of the tenancy agreement confirming the amount of rent due, as well as a text message conversation between the Landlords and the Tenant regarding the amount of rent owed to the Landlords.

### Analysis

Based on the uncontested oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the *Act*. 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 was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlords to prove the existence of the damage or 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 Landlords must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

Section 26 of the *Act* states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the *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.

In this case, I find that the Landlords have provided sufficient evidence to demonstrate that the Tenant was required to pay rent in the amount of \$2,400.00 on the first day of each month. I find that the Tenant breached Section 26 of the *Act* by failing to pay rent to the Landlords in June and July 2022. As such, I find that the Landlords are entitled to compensation in the amount of **\$4,800.00** for loss of rent.

Having been successful, I find the Landlords are entitled to recover the **\$100.00** filing fee paid to make the Application. I also find it appropriate in the circumstances to order that the Landlords retain the security deposit in the amount of \$1,200.00 in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlords are entitled to a monetary order in the amount of \$3,700.00, which has been calculated below;

<b>Claim</b>	<b>Amount</b>
Unpaid rent:	\$4,800.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	<i>-( \$1,200.00 )</i>
<b>TOTAL:</b>	<b>\$3,700.00</b>

### Conclusion

The Landlords have established an entitlement to monetary compensation and have been provided with a monetary order in the amount of **\$3,700.00**. The order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 17, 2023

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Residential Tenancy Branch