



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL, MNDCL, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord July 25, 2022 (the “Application”). The Landlord applied:

- To recover unpaid rent
- For compensation for monetary loss or other money owed
- For reimbursement for the filing fee

The Landlord appeared at the hearing. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Landlord. I told the Landlord they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlord 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 Landlord was granted an order for substituted service in a Decision issued August 10, 2022. The Landlord was allowed to serve the Tenant at an email address noted in the Decision. The Landlord confirmed they sent the hearing package and their evidence to the Tenant at the approved email address on August 11, 2022. The Landlord submitted a copy of the email.

Based on the undisputed testimony of the Landlord and email in evidence, I am satisfied the Landlord served the Tenant with the hearing package and their evidence on August 11, 2022, in compliance with the substituted service Decision. Further to the Decision,

the Tenant is deemed to have received the hearing package and Landlord's evidence August 14, 2022. I find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord 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 compensation for monetary loss or other money owed?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Unpaid rent – May	\$2,200.00
2	Loss of rent – June	\$2,200.00
3	Bailiff fees	\$2,199.19
4	Move out cleaning	\$397.80
5	Filing fee	\$100.00
	TOTAL	\$7,096.99

The Landlord submitted a written tenancy agreement between the parties. The tenancy started January 01, 2022, and was for a fixed term ending December 31, 2022. Rent was \$2,200.00 due on the first day of each month. The Landlord said the Tenant never paid a security deposit.

The Landlord testified that the Tenant was removed from the rental unit by bailiffs on May 30, 2022.

#1 Unpaid rent – May \$2,200.00

The Landlord testified that the Tenant did not pay May rent and did not have authority under the *Act* to withhold this rent.

#2 Loss of rent – June \$2,200.00

The Landlord testified that they received an Order of Possession for the rental unit May 13, 2022; however, the Tenant did not comply with the Order. The Landlord said bailiffs removed the Tenant May 30, 2022. The Landlord said the unit could not be re-rented until July because the Landlord was out of the country from May 20th to mid-June and because of the state of the rental unit at the end of the tenancy.

#3 Bailiff fees \$2,199.19

The Landlord testified that they served the Order of Possession on the Tenant; however, the Tenant did not move out. The Landlord said they had to file the Order in the BC Supreme Court and have bailiffs come remove the Tenant from the rental unit. The Landlord pointed to an invoice for the bailiff fees in evidence.

#4 Move out cleaning \$397.80

The Landlord said the Tenant did not leave the rental unit reasonably clean at the end of the tenancy. The Landlord testified that the Tenant did not do any cleaning at the end of the tenancy. The Landlord said they hired a company to clean the unit and have submitted the invoice.

The Landlord submitted the following relevant documentary evidence:

- 10 Day Notice for May rent
- Proof of Service of the 10 Day Notice
- Text messages between the parties about unpaid rent for May
- Invoice for bailiffs
- Invoice for cleaning company

Analysis

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.

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 accept the undisputed testimony of the Landlord and based on it, as well as the documentary evidence, I find the following.

#1 Unpaid rent – May \$2,200.00

Sections 26 and 57 of the *Act* state:

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.

57 (3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

The Tenant owed rent while they remained living in the rental unit. The Tenant remained living in the rental unit until May 30, 2022. The Tenant did not pay May rent. The Landlord is not aware of the Tenant having authority under the *Act* to withhold rent and there is no evidence before me that the Tenant did. The Tenant owes the Landlord **\$2,200.00** for May rent.

#2 Loss of rent – June \$2,200.00

The Landlord did not receive an Order of Possession for the rental unit until May 13, 2022. The Order was served on the Tenant but the Tenant did not comply with it and therefore breached an Order of the RTB. The Landlord had to have bailiffs remove the Tenant which did not happen until May 30, 2022. The Tenant did not leave the rental unit in a rentable state at the end of the tenancy. Further, the Tenant's breach of the RTB Order meant the Landlord was not around to re-rent the unit for June. The Landlord could not reasonably have re-rented the unit for June in the circumstances and I award the Landlord the **\$2,200.00** sought.

#3 Bailiff fees \$2,199.19

The Tenant did not move out of the rental unit in compliance with the Order of Possession issued May 13, 2022, and therefore breached an Order of the RTB. The Landlord had to have bailiffs remove the Tenant which cost \$2,199.19. The Tenant is responsible for reimbursing the Landlord for the bailiff costs and I award the Landlord **\$2,199.19**.

#4 Move out cleaning \$397.80

Section 37 of the *Act* states:

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

(a) leave the rental unit reasonably clean...

The Tenant did not leave the rental unit reasonably clean at the end of the tenancy and therefore breached section 37 of the *Act*. The Landlord had to hire cleaners to clean the rental unit and this cost \$397.80. I award the Landlord the **\$397.80** sought.

#5 Filing fee \$100.00

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	Unpaid rent – May	\$2,200.00
2	Loss of rent – June	\$2,200.00
3	Bailiff fees	\$2,199.19
4	Move out cleaning	\$397.80
5	Filing fee	\$100.00
	TOTAL	\$7,096.99

The Landlord is issued a Monetary Order for \$7,096.99 under section 67 of the *Act*.

Conclusion

The Landlord is issued a Monetary Order for \$7,096.99. 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: May 18, 2023

Residential Tenancy Branch