



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes: FFL MNDCL-S MNRL-S

Introduction

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

- a monetary order for unpaid rent and compensation for monetary loss or money owed 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 1:53 p.m. to enable the tenants to participate in this scheduled hearing for 1:30 p.m. 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 landlord, their agent, witness, and I were the only ones who had called into this teleconference.

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. All parties confirmed that they understood.

At the outset of the hearing, the landlord requested that the Style of Cause be amended to reflect the landlord's legal name, instead of company representing the landlord. I am satisfied that the owner was present and confirmed that they were the landlord for this tenancy. Accordingly, the Style of Cause was amended to reflect the owner's name.

The landlord confirmed that the tenants were served with the landlord's application for dispute resolution hearing packages and evidence on by way of registered mail on September 1 and September 9, 2022. The landlord provided the tracking numbers in their evidentiary materials, which are noted on the cover page of this decision. The landlord also filed an amendment to their application, which was served on both tenants on November 23, 2022. The landlord provided the tracking numbers during the hearing, which are also noted on the cover page of this decision. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants deemed served with the landlord's application, evidence, and amendment, five days after its registered mailing. The tenants did not submit any evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent and losses associated with this tenancy?

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 properly before me and the testimony of the parties, 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 month-to-month tenancy began on November 1, 2013, with monthly rent set at \$1,340.00, payable on the first day of the month. The landlord still holds the security deposit of \$600.00.

The landlord testified that they required the services of a Court Bailiff to enforce a Writ of Possession for this tenancy. The landlord included in their amendment package a signed letter from the Bailiff confirming that two Court Bailiffs attended the rental unit on August 31, 2022 with a moving team and locksmith to assist the landlord with obtaining vacant possession of the rental unit. The letter notes that the unit was filthy and smelly, with dog feces throughout the unit.

The landlord testified that the tenants have not paid any rent for June 2022 through to August 2022, and due to the tenants' failure to vacate the rental unit as required, and in reasonably clean condition, the landlord was unable to re-rent the unit for September 2022. The landlord testified that they were able to find a new tenant for January 2023.

The landlord also testified that they had to pay several fines due to bylaw infractions associated with the tenants. The landlord testified that they paid these fines, and wish to recover the money paid.

The landlord is requesting monetary compensation as follows:

Unpaid Rent for June 2022-August 2022	\$4,020.00
Loss of rental income for September 2022	1,340.00
Bailiff Fees	4,179.25
Bylaw Fines	1,800.00
Recovery of Filing Fee	100.00
Total Monetary Award Requested	\$ 11,439.25

The landlord provided documentary evidence to support the above losses.

Analysis

I find that the landlord provided sufficient evidence to support that the tenants failed to move out as required, and the landlord suffered losses associated with the removal of the tenants and their belongings. I accept the evidence of the landlord that the tenants did not voluntarily vacate the rental unit, which required the landlord to obtain a Writ of Possession, and pay for the services of a Bailiff. I am also satisfied that the landlord was unable to obtain vacant possession of the rental unit until August 31, 2022, and the landlord did not receive any rent for the period of June 2022 to August 2022.

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

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.*

I find that the tenants were obligated to pay the rent as per the tenancy agreement and the Act. I find that the landlord provided sufficient evidence to support that no rent was paid for June 2022 to August 2022. On this basis, I allow the landlord's monetary claim for unpaid rent for this period. I am also satisfied that the landlord suffered a monetary loss equivalent to one month's rent for the month of September 2022 due to the tenants' failure to leave the rental unit in reasonably clean condition and provide vacant

possession to the landlord as required. Accordingly, I allow the landlord's monetary claim for loss of rental income for September 2022.

I find that the landlord provided sufficient evidence to support the losses associated with the removal of the tenants by the bailiff after obtaining a Writ of Possession. Accordingly, I allow the landlord's monetary claim for reimbursement of the costs associated with enforcing the Writ of Possession.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was successful in their application, I find that the landlord is entitled the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenants' security deposit. 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 satisfaction of the monetary awards 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, \$4.39 is payable as interest on the tenants' security deposit from October 15, 2013, when the deposit was originally paid, until the date of this decision, May 17, 2023.

Conclusion

I issue a Monetary Order in the amount of \$10,834.86 in the landlord's favour as set out in the table below.

Unpaid Rent for June 2022-August 2022	\$4,020.00
Loss of rental income for September 2022	1,340.00
Bailiff Fees	4,179.25
Bylaw Fines	1,800.00
Recovery of Filing Fee	100.00
Less Deposit Held plus Applicable Interest	-604.39
Total Monetary Award	\$10,834.86

The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) 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: May 17, 2023

Residential Tenancy Branch