



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

ONAL SETTLEMENT GROUP LTD
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, made on February 21, 2022 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

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

Original Hearing

The Landlord, the Tenant's Representative, and the Tenant's Representative's Translator attended the original hearing at the appointed date and time. At the start of the original hearing, the Tenant's Representative stated that he is a property manager and that he rented out the rental unit to a sub-tenant. The Tenant's Representative confirmed that the Tenant, who is a corporate Tenant was listed as a Tenant on the tenancy agreement with the Landlord, and also listed as the Respondent on the Landlord's Application. I am satisfied that the parties are correctly named on the Notice of Hearing.

At the start of the hearing, the Landlord stated that he served the Tenant's Representative with the Notice of Hearing and documentary evidence by Canada Post Registered Mail on March 4, 2022. The Landlord stated that the Tenant had not provided their forwarding address at the end of the tenancy, therefore, he researched the corporate Landlord's address and served the document to the address associated to the corporation.

The Tenant's representative stated that they did not receive the Landlord's Application, and was only notified by the Residential Tenancy Branch prior to the hearing.

Preliminary Matters

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;**
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...

According to the Residential Tenancy Branch Policy Guideline 12; Where a landlord is serving a tenant by Registered Mail, the address for service must be **where the tenant resides at the time of mailing, or the forwarding address provided by the tenant.**

In this case, I find that the Tenant did not serve the Landlord with their forwarding address. As such, I accept that the Tenant did not receive the Landlord's Application. As both parties attended the hearing, I confirmed the Tenant's address for service which is included on the cover page of this decision. The Landlord is ordered to re-serve the original Application and documentary evidence to the Tenant, to the address provided for service in accordance with the Act and Rules of Procedures.

The Tenant is permitted to respond to the Landlord's Application and submit documentary evidence in response to the Application. The Tenant is ordered to serve a copy of their evidence to the Residential Tenancy Branch as well as to the Landlords by email, which has also been provided on the cover page of this interim decision, in accordance with the Act and Rule of Procedures.

Reconvened Hearing

The hearing was reconvened on June 27, 2023 and was attended by both Landlords, the Tenant's representative W.Y. and the Tenant's Counsel L.Y. At the start of the reconvened hearing, the Tenant's Representative confirmed receipt of the Landlords' Application and documentary evidence. As there were no issues raised, I find these documents were sufficiently served pursuant to Section 71 of the Act. The Tenant's Representative confirmed that they did not submit any evidence in response to the Landlords' Application.

The Tenant's Representative and Counsel submitted that the Respondent acted as an Agent for the Landlord and that they rented out of rental unit to Occupants on behalf of the Landlords. The Tenant's Representative stated that they had a property management agreement which was formed the addendum to the tenancy agreement between the parties. Neither party submitted a copy of the addendum for my consideration. The Landlords denied that the Tenant was acting as their Agent. I note that the Tenant's Representative provided conflicting testimony compared to their earlier statements during the original hearing where they acknowledged being a Tenant and subleasing the rental unit.

The Landlords provided a copy of the tenancy agreement between the Applicant and the Respondent. While the Respondent is a Corporation, I am satisfied that they entered into a tenancy with the Landlords, during which they subleased the rental unit to other occupants during the tenancy. The Tenant's representative confirmed that they paid rent and a deposit to the Landlords, not their subtenants.

I find that the Corporate Tenant and the Landlords entered into a tenancy, which is confirmed by the tenancy agreement between them. I find that there is insufficient evidence to demonstrate that the Corporate Tenant was acting as an Agent for the Landlords.

The parties 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 damage compensation or loss, pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to a monetary order for unpaid rent and utilities, pursuant to Section 67 of the *Act*?
3. Are the Landlords entitled to retaining the security deposit, pursuant to Section 38, and 72 of the *Act*?
4. Are the Landlords entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties agreed to the following: the tenancy began on September 1, 2019. The Tenant was required to pay rent in the amount of \$2,500.00 to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$1,250.00 which the Landlords continue to hold. The tenancy ended on August 31, 2020.

The Landlords are seeking compensation for loss of rent in the amount of \$10,000.00. The Landlords stated that the Tenant failed to pay rent in the amount of \$2,500.00 when due for April, May, June, and July 2020. As such, the Landlords stated that they suffered a loss of \$10,000.00.

The Tenant's Representative stated that the parties had an agreement pursuant to the addendum in which the Tenant would only have to pay the Landlords rent if they received rent from their subtenant. The Tenant's Representative stated that if they made more than \$2,500.00 the Tenant would be able to keep the additional funds. If they received less than \$2,500.00 they would not be required to make up the difference. The Tenant referred to the Landlords' bank statement where it shows several partial payments of rent paid by the Tenant. The Landlords stated that there was no such agreement and that the Tenant was expected to pay rent in full and failed to do so.

The Landlords are claiming \$1,320.43 for unpaid Hydro bills. The Landlords stated that the Tenant was responsible for paying hydro throughout the tenancy. The Landlords provided the unpaid Hydro bills in support. The Tenant's representative confirmed that the Tenant was responsible for paying the hydro bills and confirmed that they had failed to pay these bills.

The Landlords are claiming \$344.82 to replace a broken oven door. The Landlords provided a receipt in support. The Tenant's Representative acknowledged that the oven door was broken during the tenancy. The Tenant's Representative stated that the

Tenant paid for the damages, however, the Tenant did not submit any evidence in support. The Landlords denied that the Tenant paid for the bill to replace the over door.

The Landlords are claiming \$700.00 to repair damaged walls throughout the rental unit. The Landlords stated that they have not yet completed the repairs but provided a text message quoting \$700.00. The Tenant's Representative stated that they repaired the walls before the end of the tenancy. The Tenant's Representative stated that they did not submit any evidence in support.

The Tenant's Counsel stated that the Landlord did not complete a condition inspection report at the start, nor at the end of the tenancy. As such, the Landlords were not permitted to retain the Tenants' deposit.

Analysis

Based on the 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.

The Landlord is claiming \$10,000.00 as the Tenant did not pay rent in the amount of \$2,500.00 for April, May, June, and July, 2020.

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.

I find that the parties have a tenancy agreement in place where the Tenant agreed to pay the Landlords rent in the amount of \$2,500.00 due on the first day of each month. I find that the Tenant provided insufficient evidence to support that they had an agreement with the Landlords to pay less rent if the subtenants did not pay the Tenant rent. As such, I find that the Landlords are entitled to compensation in the amount of **\$10,000.00** for loss of rent.

The Landlords are claiming \$1,320.43 for unpaid Hydro bills. During the hearing, the Tenant's Representative did not dispute that the Tenant was required to pay these bills. As such, I find that the Landlords are entitled to compensation in the amount of **\$1,320.43** for unpaid Hydro bills.

The Landlords are claiming \$344.82 to replace a broken oven door. I find that the Tenant provided insufficient evidence to demonstrate that they paid for the repairs. I find that the invoice provided by the Landlords is in their name and I accept that the oven door was broken during the tenancy. As such, I find that the Landlords are entitled to compensation in the amount of **\$344.82**.

The Landlords are claiming \$700.00 to repair damaged walls throughout the rental unit. I find that the Landlords have not yet completed the work to repair the walls in the rental unit. I find that the quote referred to by the Landlords is a text which does not outline the proposed scope of work or how they arrived to \$700.00. I find that the Landlords have provided insufficient evidence to demonstrate that they suffered a loss or the value of the loss. As such, I dismiss this claim without leave to reapply.

Having been partially successful, I find the Landlords are entitled to recover the **\$100.00** filing fee paid to make the Application.

The Landlords have applied to retain the Tenant's security deposit in the amount of \$1,250.00. During the hearing, the Tenant's Representative stated that the Landlords did not complete a condition inspection report, therefore, should not have retained the Tenant's deposit.

Section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. If a landlord fails to repay deposits or make a claim against them within 15 days, section 38(6) of the *Act* confirms the tenant is entitled to receive double the amount of the deposits.

In this case, the Tenant's Representative's argument that the Landlords extinguished their right to claim against the security deposit has no effect, as extinguishment under either sections 24 and 36 of the *Act* only relate to claims for damage to the rental unit. In this case, the Landlord's claims also relate to financial loss of rent which is not considered to be damage. As a result, whether they extinguished or not has no bearing on the outcome of the current Application.

I also find it appropriate in the circumstances to order that the Landlords retain the security deposit in the amount of \$1,250.00 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 \$10,515.25, which has been calculated below;

Claim	Amount
Unpaid rent:	\$10,000.00
Unpaid utilities:	\$1,320.43
Oven Door Replacement:	\$344.82
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-(<i>\$1,250.00</i>)
TOTAL:	\$10,515.25

Conclusion

The Landlords have established an entitlement to monetary compensation and have been provided with a monetary order in the amount of **\$10,515.25**. 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).

Dated: June 28, 2023