



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on May 25, 2022 (the "Application"). The Landlord 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.

The Landlord's Agents A.G., J.G., and the Tenant attended the hearing at the appointed date and time. At the start of the hearing, the Tenant confirmed receipt of the Notice of Hearing and the Landlord's evidence. As such, I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

The Tenant stated that he served the Landlord's Agents by email on January 25, 2023. The Tenant provided a screen shot of the email sent to the Landlord's Agents. The Landlord's Agents stated that they did not receive the Tenant's evidence. The Landlord's Agents stated that email was not an approved form of service as no consent was given to the Tenant to serve tenancy related documents by email.

The Tenant referred to an "Agent Authorization" form in which the Landlord appoints the Landlord's Agent to represent them. I note that the Authorization form contains the Landlord's Agents' email addresses as well as the Landlord's Address for service. I find that the address for service is different than the one listed in the Notice of Hearing. I further note that the tenancy agreement between the parties lacks an address for service for the Landlord. I find that the Landlord's Address for service has not been made clear to the Tenant.

As such, I find that it is reasonable to adjourn the hearing to allow the Tenant to re-serve the Landlord's Agents to the address listed in the Notice of Hearing as the Landlord's Agents address for service. This address was clarified during the hearing. The Tenant was directed to re-serve his documentary evidence to the Landlord's Agents by Canada Post Registered Mail with tracking. The Tenant was instructed to provide proof of service prior to the Reconvened Hearing.

The hearing was reconvened on May 29, 2023 by teleconference hearing. The Tenant and the Landlord's Agents attended the reconvened hearing. The Landlord's Agents confirmed receipt of the Tenant's documentary evidence. I find that these documents were sufficiently served pursuant to Section 71 of the Act.

Issues to be Decided

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

Background and Evidence

A tenancy agreement was submitted into evidence which confirms that the tenancy began on October 1, 2020. During the tenancy, the Tenant was required to pay rent in the amount of \$3,800.00 to the Landlord which was due on the first day of each month. The Tenant paid a security deposit in the amount of \$1,900.00 which the Landlord's Agents confirmed that the Landlord continues to hold. The parties agreed that the Tenant vacated the rental unit on May 5, 2022.

The Landlord is seeking compensation in the amount of \$4,975.85 to hire a Court ordered Bailiff, \$120.00 to obtain a Writ of Possession from the Supreme Court, and \$225.75 to change the locks to the rental unit. The Landlord's Agents stated that after receiving an Order of Possession dated January 27, 2022 from the Residential Tenancy Branch, the Landlord's Agents served the Tenant with the Order of Possession. As the Tenant did not comply with vacating on the effective date of the Order of Possession,

the Landlord was successful in obtaining a Writ of Possession and hired a Bailiff to remove the Tenant from the rental unit. The Landlord provided a receipt of the costs in support.

The Tenant responded by stating that it was not possible for them to vacate the rental unit in two days. As such, the Tenant stated that he attended the Supreme Court on February 7, 2022 and was successful with gaining a Stay on the Order. The Tenant stated that the Landlord had already secured a Bailiff and that the eviction was illegal.

The Landlord's Agents stated that the Tenant disregarded the Bailiff's orders which were posted on the door of the rental unit and had the locks changed to be able to re-enter the rental unit.

The Landlord is seeking \$7,400.00 for loss of rent. The Landlord's Agents stated that the Tenant overhauled the rental unit after the Bailiff attended. The Landlord's Agents stated that the Tenant stayed until May 5, 2022 until the Landlord was able to find another method to remove the Tenant. The Landlord's Agents stated that the Tenant only paid \$2,000.00 for March and April 2022 instead of \$3,800.00, and paid no rent for May 2022. As such the Landlord is seeking to recover \$7,400.00 for loss of rent.

The Tenant responded by stating that the Landlord asked him to help with renovating the basement of the rental unit, therefore, the Tenant felt entitled to paying a reduced amount of rent in exchange for his services and loss of use of the basement. The Tenant confirmed that he only paid \$2,000.00 to the Landlord for April and March 2022 and did not pay rent for May 2022.

The Landlord's Agents stated that the Tenant failed to pay the following utilities to the Landlord; Fortis Gas \$340.08, City Water Bills \$870.70 and \$158.40. These amounts total \$1,369.18. The Landlord provided a copy of the bills and the tenancy agreement showing that the Tenant is responsible for paying utilities in support.

The Tenant stated that he had a verbal agreement with the Landlord that he could deduct the utilities from the rent in exchange for helping with renovating the basement.

If successful, the Landlord is seeking the return of the filing fee.

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 Landlord 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 Landlord 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 seeking compensation in the amount of \$4,975.85 to hire a Court ordered Bailiff, \$120.00 to obtain a Writ of Possession from the Supreme Court, and \$225.75 to change the locks to the rental unit.

I find that the Landlord followed the proper process to evict the Tenant after the Tenant failed to comply with the Order of Possession dated January 27, 2022. I find that the Tenant waited until after the Landlord had secured a Bailiff to seek a Stay on the Order of Possession. I find that the Tenant provided insufficient evidence to demonstrate that they received a Stay of the Order prior to the Landlord hiring a Bailiff to gain vacant possession of the rental unit.

I further find that the Tenant did not have a right to change the locks and continue residing in the rental unit after the bailiff had removed the Tenant's belongings. As such,

I award the Landlord **\$5,321.60** for the cost of the Bailiff, Writ of Possession, and Locksmith.

I accept that the Tenant continued to reside in the rental unit until May 5, 2022. I find that the Tenant was overholding the rental unit and I find that the Landlord suffered a loss of rent in the amount of \$7,400.00 for March, April and May 2022 as the Tenant did not pay the full amount of monthly rent owed to the Landlord. I find that the Tenant provided insufficient evidence to demonstrate that they were permitted to occupy the rental unit or that the Landlord agreed to accept less rent each month. The Landlord is therefore entitled to a monetary award of **\$7,400.00** for loss of rent.

The Landlord is claiming for loss relating to unpaid utility bills. The Landlord is claiming Fortis Gas \$340.08, City Water Bills \$870.70 and \$158.40. These amounts total \$1,369.18. I find that the tenancy agreement between the parties outlines that the Tenant is responsible for paying utilities. I find that the Tenant provided insufficient evidence to demonstrate that the Landlord waived the Tenant's responsibility to pay these bills. As such, I find that the Landlord is entitled to a monetary award of **\$1,369.18** for unpaid utilities.

Having been successful, I find the Landlord is 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 Landlord retain the security deposit in the amount of \$1,900.00 in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$12,290.78, which has been calculated below;

Claim	Amount
Bailiff, Writ, Locksmith:	\$5,321.60
Loss of rent:	\$7,400.00
Unpaid utilities:	\$1,369.18
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-(<i>\$1,900.00</i>)
TOTAL:	\$12,290.78

Conclusion

The Landlord has established an entitlement to monetary compensation and have been provided with a monetary order in the amount of **\$12,290.78**. 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: June 5, 2023

Residential Tenancy Branch