



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was scheduled to convene at 1:30 p.m. on June 29, 2023 concerning an application made by the landlord seeking the following relief:

- a monetary order for unpaid rent or utilities;
- a monetary order for damage to the rental unit or property;
- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement;
- an order permitting the landlord to keep all or part of the security deposit and/or pet damage deposit; and
- to recover the filing fee from the tenants for the cost of the application.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenants joined the call.

The landlord advised that the tenants were individually served with the Notice of Dispute Resolution Proceeding by registered mail on October 19, 2022, and has provided evidence of that. The landlord's evidentiary material was served by registered mail on June 7, 2023, however as an oversight the landlord didn't provide the evidence to the Residential Tenancy Branch site until June 19 and June 26, 2023. Although the evidence ought to have been uploaded to the Residential Tenancy Branch site 14 days prior to the hearing, I found that the copies provided to the tenants were deemed to have been received on June 12, 2023, which is more than 14 days. I found that the tenants were not prejudiced by the landlord's oversight, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenants for damage to the rental unit or property?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for Bailiff fees, Court fees, liquidated damages, and Skip Tracing costs?
- Should the landlord be permitted to keep all or part of the security deposit and/or pet damage deposit in full or partial satisfaction of the landlord's claims?

Background and Evidence

The landlord testified that this fixed-term tenancy began on January 15, 2022 and was to revert to a month-to-month tenancy after February 28, 2023. However, the tenants were removed by a Bailiff on September 12, 2022.

Rent in the amount of \$2,065.00 was payable on the 1st day of each month, and the tenants are currently in arrears \$238.08 for August, 2022 rent and paid no rent for September. The landlord was successful in obtaining a monetary order in the amount of \$995.00 for July, 2022 rent, and the landlord claims \$2,303.08 for August and September. On January 3, 2022 the landlord collected a security deposit from the tenants in the amount of \$1,032.50, and collected a pet damage deposit of \$1,032.50 which the tenants paid by installments.

The rental unit is a condominium apartment, and the landlord lived in the apartment next door during this tenancy. A copy of the tenancy agreement has been provided as evidence for this hearing. A move-in condition inspection report was completed with the tenants at the beginning of the tenancy, and after the Bailiffs removed the tenants, the landlord completed the move-out condition inspection report with a witness present. Copies have been provided for this hearing. The landlord further testified that on September 6, 2022 when the landlord delivered the order of possession, the move-out condition inspection report was scheduled for September 9. The landlord also taped a Final Notice to Schedule a Condition Inspection to the door of the rental unit.

The landlord has provided a monetary order worksheet setting out the following claims, totalling \$25,203.94:

- \$2,065.00 for unpaid rent for September, 2022;
- \$238.07 for August, 2022 unpaid rent;
- \$50.00 for late fees for August and September, 2022 rent;
- \$4,130.00 for liquidated damages;
- \$2,362.81 for the Court Bailiff (receipt provided);
- \$120.00 for filing the application for a Writ of Possession (receipt provided);
- \$100.00 for unpaid hydro (bills provided);
- \$149.80 for unpaid utilities (bills provided);
- \$341.25 for Skip Tracing to locate the tenants;
- \$2,969.65 for replacement of damaged floor and trim (Invoice provided);
- \$5,198.76 for painting affected areas (Invoice provided);
- \$1,012.50 for cleaning costs (receipt provided);
- \$1,438.55 for replacement of damaged kitchen counters;
- \$1,989.30 for replacement of the damaged patio membrane;
- \$443.78 for repair and finishing to the damaged fridge;
- \$160.00 for a plumbing bill to unclog the kitchen sink;
- \$125.00 for labour to repair the damaged patio door screen;
- \$41.80 to replace the damaged shower head (receipts provided);
- \$103.37 to replace the damaged blinds (receipts provided);
- \$312.96 to replace a damaged closet door (receipts provided);
- \$68.24 to replace damaged window handles;
- \$113.03 to replace a missing portable heater (receipt provided);
- \$1,440.00 to replace a damaged main entrance door frame (Invoice provided);
- \$60.77 to replace a lock and keys (receipts for \$35.77 provided);
- \$19.57 to replace burned out light bulbs (receipt provided);
- \$50.40 to replace a missing window screen (Invoice for \$151.20 provided);
- \$50.00 for replacement of a visitor parking pass; and
- \$58.91 for missing drain stoppers and damage (receipt provided).

Numerous photographs and receipts have also been provided for this hearing.

The tenants have not served the landlord with an application claiming the security deposit or pet damage deposit, and have not provided the landlord with a forwarding address in writing.

Analysis

Firstly, I have reviewed all of the evidence, and I accept the undisputed testimony of the landlord that the tenants did not pay rent for August and September, 2022 in full, and owe \$2,065.00 for September's rent, and \$238.08 for August rent. I have also reviewed the tenancy agreement which provides for a late fee of \$25.00. I find that the landlord has established a claim of **\$2,303.08** and **\$50.00** for late fees.

The *Residential Tenancy Act* specifies that a landlord may not include in a tenancy agreement a term that is unconscionable. Liquidated damages must not be a penalty, but a pre-determined amount for the costs associated with re-renting. I find that liquidated damages in the amount of twice the actual rent is unconscionable, and I dismiss that portion of the landlord's claim.

I have reviewed the utility bills and I accept the calculations made by the landlord. I find that the landlord has established a claim of **\$249.80**.

The *Act* provides for recovery of a filing fee if a party is successful with an application, but not for costs incurred for serving documents or preparing for a hearing. Therefore, I dismiss the landlord's application for Skip Tracing fees.

I have reviewed the Bailiff and Court fee receipts, and I find that the landlord has established a claim of **\$2,362.81** and **\$120.00** respectively.

In order to be successful in a claim for damage or loss, the onus is on the landlord to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the tenants' failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the landlord made to mitigate any damage or loss suffered.

Having reviewed the photographs, Invoices and the condition inspection reports, I am satisfied that the landlord has established the balance of the claim for damages in the amount of **\$15,646.09**.

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the **\$100.00** filing fee.

The landlord has retained the \$1,032.50 security deposit and the \$1,032.50 pet damage deposit, which I offset from the landlord's claim.

I grant a monetary order in favour of the landlord as against the tenants in the amount of \$20,842.28, less the deposits totalling \$2,065.00, for a total of **\$18,766.78**. The tenants must be served with the order, which may be filed for enforcement in the Provincial Court of British Columbia, Small Claims division as an order of that Court.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$1,032.50 security deposit and the \$1,032.50 pet damage deposit, and I grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$18,766.78**.

This order is final and binding and may be enforced.

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: July 06, 2023

Residential Tenancy Branch