



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

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

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on December 9, 2022. The Landlord applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- a monetary order for unpaid rent;
- a monetary order for the cost to repair damage that the Tenants, their pets or their guests caused during the tenancy;
- a monetary order for compensation for monetary loss or other money owed;
- an order permitting the Landlord to retain the security deposit held; and
- an order granting recovery of the filing fee.

The Landlord and the Tenants attended the hearing and provided affirmed testimony.

The Landlord testified that the Notice of Dispute Resolution Proceeding package and amendment was served on the Tenants by registered mail. The Tenants acknowledged receipt of these documents. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The Tenants testified that the documentary evidence submitted in response to the Landlord's application was not served on the Landlord but was sent to the property manager by mistake. As the Landlord testified the documentary evidence was not received, the Tenants' documentary evidence has not been considered in reaching a decision.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form as appropriate, 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. Is the Landlord entitled to a monetary order for unpaid rent?
2. Is the Landlord entitled to a monetary order for the cost to repair damage that the Tenants, their pets or their guests caused during the tenancy?
3. Is the Landlord entitled to a monetary order for compensation for monetary loss or other money owed?
4. Is the Landlord entitled to an order permitting the Landlord to retain the security deposit held?
5. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began on June 1, 2020. The Tenants moved out of the rental unit on December 1, 2022. During the tenancy, rent of \$2,300.00 per month was due on or before the first day of each month. The Tenants paid a security deposit of \$1,150.00, which the Landlord holds.

The Application discloses a total claim for \$3,315.00. However, that amount is based on a duplicate claim for the filing fee. The corrected amount of the claim is \$3,215.00.

First, the Landlord testified the Tenants provided notice to end the tenancy on November 21, 2022, and vacated the rental unit without paying rent when due on December 1, 2022. The Landlord submitted that the Tenants did not provide adequate notice.

In reply, the Tenants acknowledged the timeline described by the Landlord. The Tenants testified they had to depart quickly due to financial strain but let the Landlord know as soon as possible. The Tenants also testified to their understanding that the notice requirement under the Act is to give landlords an opportunity to obtain a new tenant. However, the Tenants question the Landlord's entitlement to rent for December 2022 when the Landlord did not re-rent the unit until June 2022. The Landlord

acknowledged the unit was not re-rented until June 2022 because of renovations and repairs.

Second, the Landlord claims \$400.00 to replace lights in the rental unit. The Landlord advised that the amount claimed was based on an estimate provided by the property manager on the move-out condition inspection report. No photographs or receipts were referred to during the hearing.

In reply, the Tenants referred to the move-out condition inspection which refers to the lights not working in one bedroom and a bathroom. They question the amount sought by the Landlord.

Third, the Landlord claims \$400.00 for failing to maintain the yard. The Landlord referred to paragraph 14 of the tenancy agreement which states, in part:

The Tenant shall maintain the premises including all gardens and lawns in the condition under which they were leased and agrees to mow and water the lawn and to keep the lawn, flower beds, and shrubbery in good order and condition, and to keep the sidewalk surrounding the premises free and clear of all obstructions and shall do so at their own expense.

The Landlord confirmed that the amount claimed was based on an estimate provided by the property manager on the move-out condition inspection report. Photographs of the yard taken at the end of the tenancy were also submitted in support.

In reply, the Tenants acknowledged that the yard became overgrown but stated the brambles originated in the neighbour's yard and grew onto the rental property. The Tenants also submitted that dealing with brambles was not a typical landscaping responsibility of a tenant. However, the Tenants acknowledged the grass could have been maintained better.

Third, the Landlord claims a \$15.00 bank fee incurred because the Tenants did not pay rent when due on December 1, 2022.

In reply, the Tenants testified they had a pre-authorized debit agreement. However, the Tenants submitted that the Landlord tried to process payment even though they were informed funds would not be available.

Finally, the Landlord seeks to recover the \$100.00 filing fee paid to make the application and seeks an order allowing her to retain the security deposit.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

With respect to the Landlord's claim for \$2,300.00 for unpaid rent, section 45 of the Act confirms that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. In short, written notice given by a tenant during a periodic, i.e. month-to-month, tenancy is effective on the last day of the following month. Accordingly, I find the Tenants' notice to end the tenancy, received by the Landlord on November 21, 2022, was effective to end the tenancy on December 31, 2022, and that rent became payable when due on December 1, 2022. The Landlord is granted a monetary award of \$2,300.00 for unpaid rent.

With respect to the Landlord's claim for \$400.00 related to lights in the rental unit and \$400.00 for failing to maintain the yard, section 67 of the Act empowers the director to order one party to pay compensation to the other if damage or loss results from a party not complying with the Act, Residential Tenancy Regulation, 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 because 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 Tenants. 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.

In this case, I find the Landlord has not proved the value of the losses claimed. Rather, the Landlord confirmed she relied on the property manager's estimates as stated on the move-out condition inspection report. These aspects of the Landlord's application are dismissed.

With respect to the Landlord's claim for \$15.00 for bank fee incurred due to the Tenants' failure to pay rent, section 7 of the Residential Tenancy Regulation permits a landlord to charge a non-refundable fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for the late payment of rent. The fee must be provided for in the tenancy agreement.

In this case, I find that the tenancy agreement includes a term requiring the Tenants to pay a "\$40.00 fee imposed on all NSF cheques and/or late payments of any kind." However, I find this clause does not comply with section 7 of the Residential Tenancy Regulation as it exceeds the maximum amount available for the return of a tenant's cheque or for the late payment of rent. I also note the clause contained in the tenancy agreement purports to apply to "all NSF cheques and/or late payments of any kind," which appears to exceed the scope of section 7 of the Residential Tenancy Regulation. This aspect of the Landlord's claim is dismissed.

Having been partially successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the application. I also find the Landlord is permitted to retain the security deposit in partial satisfaction of the amount claimed.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$1,250.00, which has been calculated as follows:

Claim	Allowed
Unpaid rent:	\$2,300.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$1,150.00)
TOTAL:	\$1,250.00

Conclusion

The Landlord is granted a monetary order in the amount of \$1,250.00. The order 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: September 7, 2023

Residential Tenancy Branch