



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

This hearing was scheduled to convene at 1:30 p.m. on November 24, 2023 concerning an application made by the landlord seeking a monetary order for unpaid rent or utilities, a monetary order for damage to the rental unit or property, an order permitting the landlord to keep all or part of the pet damage deposit or security 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 record shows that the landlord was successful in obtaining a substitutional service order permitting the landlord to serve each tenant by email. The landlord has provided evidence of having done so on July 9, 2023 with "Read Receipts," and testified that additional evidence was served in that manner on July 10, 2023. I am satisfied that both tenants have been served in accordance with the *Residential Tenancy Act*.

All evidence of the landlord has been reviewed and the evidence I find relevant to the application is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for unpaid rent?
- Has the landlord established a monetary claim as against the tenants for damage to the rental unit or property?

- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed-term tenancy began on December 10, 2022 and was to revert to a month-to-month tenancy after December 10, 2023, however the tenants vacated the rental unit on May 14, 2023. Rent in the amount of \$1,600.00 was payable on the 1st day of each month, with a partial payment for the first partial month of the tenancy. On December 10, 2022 the landlord collected a security deposit from the tenants in the amount of \$800.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite, and another tenant resides in the upper level of the home.

The landlord further testified that one of the tenants gave notice to end the tenancy on April 13, 2023 by text message, a copy of which has been provided for this hearing, stating that one of the tenants had already moved out but the other tenant remained. The tenant (JL) moved out at the end of April, 2023; the tenants separated, and the tenant (JL) would come and go. The other tenant (RG) was out by May 14, 2023, and no rent was paid for May, 2023.

The parties agreed to complete a move-out condition inspection report on May 15, 2023 at 4:45 p.m. The landlord was there, but no one for the tenants showed up. The landlord did not give a Notice of Final Opportunity to Schedule an Inspection in the approved form. The parties had participated in a move-in condition inspection on December 9, 2022 and a copy has been provided for this hearing. The landlord completed the move-out portion in the absence of the tenants, which is dated May 15, 2023.

The tenants have not provided the landlord with a forwarding address, however on May 24, 2023 the landlord sent a copy of the condition inspection report to the tenants by email.

The landlord has provided a spreadsheet setting out the following claims:

- \$1,600.00 for May, 2023 rent;
- \$245.00 for cleaning;
- \$175.00 for drywall repair and paint for 2 holes in the living room;
- \$87.50 for drywall repair and paint for 1 hole in the kitchen;

- \$279.27 for damage to the bathroom door;
- \$210.00 for the landlord's time to purchase, pick up and paint the bathroom door;
- \$72.80 for a damaged shower door hinge;
- \$35.00 for the landlord's time to remove and replace the shower door hinge;
- \$70.00 to repair and paint a damaged bathroom heat register attached to the ceiling;
- \$800.00 for liquidated damages;
- \$35.00 for garbage left behind;
- \$44.15 for missing keys;
- \$35.00 for the landlord's time to re-lock;
- \$17.50 for polishing a scratched freezer door.

The landlord testified that Invoices for the cost of the bathroom door, shower door hinge and missing keys have been provided for this hearing, but they do not appear in the landlord's evidence. Photographs have been provided which the landlord testified were taken on May 15, 2023. The landlord sent the spreadsheet by email to the tenants on May 24, 2023.

The rental unit was re-rented for June 1, 2023.

The tenants have not served the landlord with an Application for Dispute Resolution claiming the security deposit, and the landlord seeks to keep it in partial satisfaction of the landlord's claim.

Analysis

Because the landlord did not serve a Final Opportunity to Schedule a Condition Inspection in the approved form, the landlord's right to make a claim against the security deposit for damages is extinguished.

However, the landlord's right to claim against the security deposit for unpaid rent is not extinguished. I accept the undisputed testimony of the landlord that the tenants vacated in May, 2023 without paying any rent for that month, and I find that the landlord is entitled to recover \$1,600.00 from the tenants. I order the landlord to keep the \$800.00 security deposit in partial satisfaction and I find that the landlord is still owed \$800.00.

Where a party makes a claim for damages, the onus is on the claiming party 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 other party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

A tenant is required to leave a rental unit reasonably clean and undamaged at the end of the tenancy. I have reviewed the photographs provided by the landlord which show that the tenants did not comply.

I have also reviewed the tenancy agreement Addendum, which specifies liquidated damages in the amount of \$800.00, and I find that the landlord has established that claim.

With respect to the landlord's claims for the cost of the bathroom door, shower door hinge and missing keys, since I have no receipts or invoices for those items, I find that the landlord has failed to satisfy element 3 in the test for damages.

With respect to the remaining claims for damages, there is nothing in the *Act* or the regulations that prohibits the landlord from repairing the damages without hiring a contractor, and in comparison to the move-in condition inspection report and the photographs, I find that the landlord has established those claims, totaling \$910.00.

Since the landlord has been partially successful with the application the landlord is also entitled to recover the \$100.00 filing fee from the tenants.

Having found that the landlord has established claims of \$1,600.00 for May, 2023 rent and \$800.00 for liquidated damages and \$910.00 for damage to the rental unit, I order that the landlord keep the \$800.00 security deposit and I grant a monetary order in favour of the landlord for the difference of \$2,610.00 ($\$1,600.00 + \$800.00 + \$910.00 + \$100.00 = \$3,410.00 - \$800.00 = \$2,610.00$). The tenants must be served with the order which may be filed in the Provincial Court of British Columbia, Small Claims division for enforcement.

Conclusion

For the reasons set out above, I hereby order that the landlord keep the \$800.00 security 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 \$2,610.00.

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: November 30, 2023

Residential Tenancy Branch