



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 December 15, 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 or pet damage deposit; and
- to recover the filing fee from the tenant 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 tenant joined the call.

The landlord testified that the tenant was served with the Notice of Dispute Resolution Proceeding, evidence and all other required documents by registered mail on June 4, 2023 and has provided a Canada Post cash register receipt containing that date and a tracking number. I am satisfied that the tenant has 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 tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue?
- 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 February 15, 2012 and reverted to a month-to-month tenancy after the first year. Rent in the amount of \$1,800.00 was originally payable on the 1st day of each month, which was increased over time to \$2,198.77. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$900.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a townhouse, and the landlord did not reside on the property during the tenancy. There is a written tenancy agreement, however a copy has not been provided for this hearing.

The landlord further testified that the tenant did not pay full rent for the last month of the tenancy, and owes \$398.67 for April, 2023.

The tenant gave notice to end the tenancy by email on April 1, 2023 effective on April 30, 2023, but kept giving the landlord excuses, and did not vacate on time. Due to the condition of the rental unit, the landlord was not able to allow a new tenant to move in until May 18, 2023. The landlord claims 17 days of loss of rental revenue, totaling \$1,205.64.

The parties participated in a move-in condition inspection at the beginning of the tenancy and the landlord has provided a copy of the report for this hearing. The landlord also testified that the tenant abandoned the rental unit, so the landlord completed the move-out portion of the report in the absence of the tenant on May 5, 2023.

The landlord claims \$2,650.20 for repairs and cleaning, and an invoice in that amount has been provided for this hearing. It includes cleaning, repairs to walls and cabinet doors, pressure washing, garbage removal and disposal, carpet shampoo and blinds cleaning and reinstallation, as well as GST. Numerous photographs have also been provided which the landlord testified were taken between May 1 and May 10, 2023. The landlord has also provided written statements from the repair contractor and cleaner. The statement from the contractor states that the job took almost 2 weeks to complete.

The tenant has not served the landlord with an Application for Dispute Resolution claiming the security deposit, and the landlord has not received a forwarding address in writing from the tenant. The landlord testified that the tenant had paid rent by cheque and the landlord questioned the address on the cheque; the tenant indicated that he had an address that his parents lived at, and the tenant's boxes were marked with that address at move-out, which was the address that the tenant was served at.

Analysis

Firstly, I accept the undisputed testimony of the landlord that the tenant failed to pay rent in full for April, 2023 and I find that the tenant is liable for the balance of **\$398.67**.

Considering the statement of the repair contractor that it took almost 2 weeks to complete the repairs, and the photographs showing damage and cleaning required before re-renting, I am satisfied that the landlord lost rental revenue from May 1, 2023 until May 17, 2023 as a result. Therefore, I find that the landlord has established a claim of **\$1,205.64** ($\$2,198.77 / 31 \times 17$).

In order to be successful in a claim for damages, the onus is on the landlord to establish that the tenant failed to comply with the law with respect to leaving a rental unit reasonably clean and undamaged at the end of the tenancy, and the amount of damage or loss suffered by the landlord.

In this case, the landlord completed the move-out condition inspection report in the absence of the tenant, but there is no evidence that the landlord attempted to schedule the inspection. The landlord testified that the tenant abandoned the rental unit, but I do not accept that given that the tenant gave notice to end the tenancy, which was accepted by the landlord. Since the landlord has not proven that the tenant was given at least 2 opportunities to schedule the inspection, the law states that the landlord's right to claim against the security deposit for damages is extinguished.

However, the landlord's right to make a claim for damages is not extinguished. I have reviewed the condition inspection reports, and I have compared them to the invoice for the repairs and cleaning claimed by the landlord. I am satisfied in the evidence that the tenant did not leave the rental unit reasonably clean and undamaged, and I find that the landlord has established the claim of **\$2,650.20**.

The landlord's right to claim against the security deposit for unpaid rent and loss of rental revenue is not extinguished. The landlord has applied to keep the \$900.00 security deposit, and I find that the interest payable on the deposit is \$16.82 from the beginning of the tenancy to the date of this hearing.

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

I order the landlord to keep the security deposit and interest of \$916.82 in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord for the difference of **\$3,437.59**. The tenant must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$916.82 security deposit and interest, and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$3,437.59**.

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: December 19, 2023

Residential Tenancy Branch