



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67;
- a monetary order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- authorization to recover the filing fee for this application from the landlord pursuant to section 72;
- cancellation of the landlord’s 2 Month Notice to End Tenancy for Landlord’s Use of Property (“2 Month Notice”), pursuant to section 49;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Preliminary Issues - Service of Documents and Status of Tenancy

Both parties confirmed that the tenant had moved out on the evening of June 1, 2024. The landlord confirmed that they no longer require an Order of Possession. As this tenancy has come to an end, the landlord's application for an Order of Possession was cancelled.

The landlord testified in the hearing that the tenant has not served them with any application or evidence. The tenant confirmed that they did not serve the landlord with their materials.

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary Order.

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;...*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;...*

At the hearing, I advised both parties that as the tenant had failed to serve the landlord in a manner required by section 89(1) of the *Act*, I cannot consider their application. The tenant's entire application is dismissed with leave to reapply.

I note that the filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenant's application was dismissed, the tenant must bear the cost of this filing fee for their application.

Preliminary Issue – Amendment

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlord's request to amend their original application to request a monetary order for unpaid rent that became owing by the time this hearing was convened.

Preliminary Issues – Claim for Damage and Losses

The landlord filed their claim for damage to the rental unit on April 30, 2024, before this tenancy had ended. The landlord submitted additional evidence in support of their claim on June 4, 2024, which was a quotation for repairs dated May 14, 2024.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Rule 3.14 of the RTB's Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 days before the hearing. The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

I am not satisfied that the landlord had served the additional evidence on the tenant at least 14 days prior to the hearing date.

Rule 3.17 states the following:

3.17 Consideration of new and relevant evidence

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the *Act* or Rules 2.5 [*Documents that must be submitted with an Application for Dispute Resolution*], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

If the arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence. The arbitrator must apply Rule 7.8 [*Adjournment after the dispute resolution hearing begins*] and Rule 7.9 [*Criteria for granting an adjournment*].

I note the date on the quotation is May 14, 2024. I find that the landlord failed to establish how the additional evidence is new, and was not available at least 14 days prior to the hearing date. A respondent is entitled to know the case against them, and have sufficient time to respond.

I am not satisfied that the landlord has met the criteria for new and relevant evidence, nor did the landlord provide a valid reason for why this evidence was submitted late. I find that accepting this late evidence would be prejudicial to the tenant, who did not have a fair opportunity to review these materials prior to the hearing and respond. For these reasons, the landlord's additional evidence will not be considered.

I also note that the landlord had filed their application related to damage to the rental unit, before the tenancy had ended on June 1, 2024. Considering that the landlord's late evidence cannot be considered for this claim, and considering that the landlord's monetary claims for damage were filed before this tenancy had ended, I dismiss the landlord's claim for damage to the home, with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

Service of Landlord's Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

The tenant acknowledged service of the landlord's Dispute Resolution Materials and Evidence. Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with sections 88 and 89 of the Act.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for unpaid rent and utilities?

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this fixed-term tenancy began on May 1, 2023, with monthly rent of \$4,000.00, due on first day of the month. The landlord still holds the security deposit in the amount of \$2,000.00.

Both parties confirmed that the tenant had moved out on the evening of June 1, 2024, around 7:00 p.m.

The landlord is requesting the following monetary orders: \$4,000.00 in unpaid rent for May 2024, and \$133.00 for overholding for the month of June 2024. The landlord is also requesting a monetary order of \$804.00 for unpaid utilities for this tenancy.

The tenant does not dispute that the no rent was paid for May or June 2024. The tenant testified that they did attempt to pay rent for May 2024, but the landlord had declined this payment. The tenant also argued that they should be compensated one month's rent as the landlord reclaimed the home for their own use.

The tenant is also disputing the amount of the claim for unpaid utilities. The tenant feels that the amount should be reduced as the landlord had used the water at the property.

The landlord confirmed that they did use the water, but only for watering the plants on the property. The landlord testified that the watering of the plants was actually the tenant's responsibility, and that the water was not used for benefitting the landlord.

Analysis

Is the Landlord entitled to a Monetary Order for unpaid rent and utilities?

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

I find that the evidence clearly shows that this was a fixed-term tenancy with a vacate clause, ending on April 30, 2024. The tenancy agreement was signed and initialed by both parties, and stated that the tenant must vacate the rental unit at the end of the fixed-term for landlord's personal use.

I find that this tenancy was to end on April 30, 2024, as per section 44(1)(b) of the Act, which states that the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term. I find that the tenant failed to vacate on April 30, 2024,

and the landlord filed their application for an Order of Possession on April 30, 2024. I am not satisfied that the landlord had agreed to enter into a new tenancy agreement with the tenant.

As per RTB Policy Guideline #30, “the tenant must move out on the date the tenancy ends. The landlord does not need to give a notice to end tenancy or pay one months’ rent as compensation as required when ending a tenancy under section 49.”

Furthermore, as per section 57(3) of the Act, if a tenant continues to occupy the rental unit after the tenancy is ended, the landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.”

In this case, the tenant continued to occupy the home until June 1, 2024. I find that the landlord is entitled to \$4,000.00 in compensation for overholding for the month of May 2023, and \$133.33 ($\$4,000.00/30 \times 1$ day) for June 1, 2024.

I find that the landlord provided detailed evidence that the tenant owes \$804.00 in unpaid utilities for the period up to April 30, 2024. I am not satisfied that the tenant had provided evidence to support that any payments were made towards the amount owed, nor do I find that the tenant had the right to make any deductions from the amount owed. Although the tenant argued that the landlord had used the water on the property, I note that the water was used strictly to water the plants on the property. As per RTB Policy Guideline #1, “Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.” I find that the watering of the plants would fall into the category of routine yard maintenance, and I am satisfied that the water was not used for any other purpose. Accordingly, I find that the tenant is responsible for the \$804.00 in unpaid utilities claimed.

Is the Landlord entitled to recover the filing fee for this application from the Tenants?

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenant’s security deposit plus applicable interest in partial satisfaction of the monetary awards granted to the landlord. As per the RTB Online Interest Tool found at <http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html>, over the period of this tenancy, \$52.51 is payable as interest on the tenant’s security deposit.

Conclusion

I grant the Landlord a Monetary Order in the amount of **\$ 2,984.82** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for overholding under section 67 of the Act	\$4,133.33
a Monetary Order for unpaid utilities	\$804.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Less security deposit held, plus applicable interest	- 2,052.51
Total Amount	\$ 2,984.82

The Landlord is provided with this Order in the above terms and the Tenant(s) must be served with **this Order** as soon as possible. Should the Tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 07, 2024

Residential Tenancy Branch