



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:41 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord and her interpreter attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was served the notice of dispute resolution package by registered mail on December 20, 2018. The landlord entered into evidence the Canada Post Tracking Number to confirm this registered mailing. I find that the tenant was deemed served with this package on December 25, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified to the following facts. This tenancy began on March 1, 2018 and ended on May 1, 2018. Monthly rent in the amount of \$3,500.00 was payable on the first day of each month. A security deposit of \$3,500.00 was paid by the tenant to the landlord. The tenant did not provide the landlord with his forwarding address in writing. The landlord hired a private detective to determine the tenant's current address.

The landlord testified that in April of 2018 she applied for an Order of Possession through the Direct Request program with the Residential Tenancy Branch. The landlord testified that she was awarded a two-day Order of Possession which she served on the tenant. The landlord testified that the tenant did not move out in accordance with the two day Order of Possession and so she hired a bailiff to evict the tenant. The landlord provided the file number for the April 2018 Direct Request proceeding.

The landlord testified that she had to pay a \$120.00 filing fee at the Supreme Court of British Columbia to receive a writ of possession which she required to hire a bailiff. The \$120.00 receipt was entered into evidence. The landlord is seeking to recover the \$120.00 from the tenant.

The landlord testified that the total cost of hiring the bailiff to evict the tenant was \$6,768.12. A receipt showing same was entered into evidence. The landlord is seeking to recover the \$6,768.12. from the tenant.

Analysis

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 37(1) of the *Act* states that unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

Based on the undisputed testimony of the landlord, I find that the tenant failed to comply with section 37(1) of the *Act* when he failed to move out of the subject rental property in accordance with the April 2018 Order of Possession. I find that the landlord suffered a loss by the tenant's non-compliance, namely she had to pay a court filing fee in the amount of \$120.00 and a bailiff fee in the amount of \$6,768.12. I find that the landlord acted reasonably in hiring a bailiff to remove the tenant from the subject rental property. I find that the landlord is entitled to recover the \$120.00 filing fee and the \$6,768.12 bailiff fee from the tenant.

Security Deposit

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
 - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38 of the *Act*.

As the landlord was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the tenant, in accordance with section 72 of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$1,750.00 in part satisfaction of her monetary claim against the tenant.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Court filing fee	\$120.00
Bailiff fee	\$6,768.12
RTB filing fee	\$100.00
Less security deposit	-\$1,750.00
TOTAL	\$5,238.12

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: April 08, 2019

Residential Tenancy Branch