



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEAK PERFORMANCE ENTERPRISES
LTD and [tenant name suppressed to protect privacy]

DECISION

<u>Dispute Codes</u>	Landlord:	MNDC MNR MNSD FF
	Tenant:	MNDC FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application was made on December 27, 2018 (the “Landlord’s Application”). The Landlord applied for the following relief pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- a monetary order for unpaid rent or utilities;
- an order that the Landlord be permitted to retain the security deposit held in partial satisfaction of the claim; and
- an order granting recovery of the filing fee.

The Tenant’s Application was made on November 1, 2018 (the “Tenant’s Application”). The Tenant applied for the following relief pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by P.T. and J.C., agents. The Tenant attended the hearing on her own behalf. All in attendance provided a solemn affirmation at the beginning of the hearing.

On behalf of the Landlord, P.T. testified the Landlord's Application package was served on the Tenant by registered mail. The Tenant acknowledged receipt. Further, the Tenant testified that the Tenant's Application package and a subsequent documentary evidence package were served on the Landlord by registered mail on November 3 and 11, 2018, respectively. P.T. acknowledged receipt on behalf of the Landlord. No further issues were raised during the hearing with respect to service or receipt of the above documents. The parties were in attendance were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, 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 money owed or compensation for damage or loss?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to retain the security deposit held in partial satisfaction of the claim
4. Is the Landlord entitled to an order granting recovery of the filing fee?
5. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
6. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?
7. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began on July 1, 2016. The parties disagreed about the specific date the tenancy ended. On behalf of the Landlord, P.T. submitted that the tenancy ended on November 14, 2018; the Tenant submitted the tenancy ended on November 7, 2018. In any event, the parties agreed rent in the amount of \$1,855.00 per month was due on the first day of each month. This included \$75.00 towards city utilities. However, the parties agreed the Tenant would also pay for any additional usage. The parties agreed the Tenant paid a security deposit of \$927.50, which the Landlord holds.

The Landlord's Claim

The Landlord's claim was summarized in the Landlord's Application. First, the Landlord claimed \$337.56 for unpaid utilities. In support, the Landlord submitted an excerpt from the city ledger which set out the amount due for utilities each quarter. The ledger did not include late payment fees or other penalties. The Landlord also relied upon a letter to the Tenant dated September 19, 2018, in which the Landlord summarized the outstanding utility amount due based on the city ledger and requested payment.

In response, the Tenant acknowledged the amount owing to the Landlord but stated she wished the information had been provided earlier.

Second, the Landlord claimed unpaid rent for May, October, and November 2018. P.T. testified the Tenant had a history of late payments throughout 2017. To address this issue, the parties agreed that rent payments in 2018 would occur by e-transfer. A copy of the Landlord's payment ledger confirms payments by e-transfer for January to April 2018, and from June to September 2018. The payment ledger shows no payment for May 2018.

In response, the Tenant testified that rent for May 2018 was paid in cash but that the Landlord did not issue a receipt. The Tenant did not refer to any documentary evidence in support of payment such as a bank statement confirming the withdrawal of rent, or an e-transfer. The Tenant acknowledged rent was not paid for the months of October and November 2018.

The Tenant's Claim

The Tenant applied for \$35,000.00 for various issues that arose during the tenancy. However, at the conclusion of the hearing on February 26, 2019, P.T. stated that the matters raised in the Tenant's Application were addressed during previous hearings on September 13 and November 20, 2018. The file numbers of the previous hearings are included above for ease of reference.

The Tenant's first application for dispute resolution was made on July 20, 2018, and was heard on September 13, 2018. The Tenant sought compensation in the amount of \$35,000.00, and other relief. However, during the hearing, the arbitrator severed the monetary portion of the Tenant's claim, with leave to reapply.

The Tenant's second application for dispute resolution was made on October 11, 2018, and was heard on November 20, 2018. The Tenant disputed an alleged rent increase, sought an order that the Landlord make emergency repairs for health or safety reasons, sought repairs that were requested but not performed, and claimed \$35,000.00 for loss of quiet enjoyment, grief, suffering and stress. A Monetary Order Worksheet, dated October 31, 2018, submitted with the Tenant's Application, particularized the Tenant's claims. In a written decision, the arbitrator dismissed Tenant's application, without leave to reapply, and granted the Landlord an order of possession pursuant to section 55(1) of the *Act*.

The current application for dispute resolution was made on November 1, 2018, before the second application referred to above was heard. In it, the Tenant claims compensation in the amount of an additional \$35,000.00. The Tenant submitted a Monetary Order Worksheet, dated January 15, 2019, which particularizes the Tenant's claim. It confirms the claim included losses from a robbery that occurred on or about December 23, 2016 (\$30,500.00), loss of use carried forward from the hearing of September 13, 2018 (\$4,400.00), and recovery of the filing fee (\$100.00).

Based on the above review, it is apparent that the Tenant made two concurrent claims for \$35,000.00, one on October 11, 2018, the other on November 1, 2018. The applications each included a claim for \$4,400.00 for losses originally claimed in the application made on July 20, 2018. The claims were otherwise different.

The monetary jurisdiction of the director, pursuant to Section 58(2) of the *Act*, section 3 of the *Small Claims Act*, and section 1 of the *Small Claims Court Monetary Limit Regulation*, is \$35,000.00. Further, Policy Guideline #27 confirms as follows:

If a claim for damage or loss exceeds the small claims limit, the director's policy is to decline jurisdiction. This ensures that more substantial claims are resolved in the BC Supreme Court, where more rigorous and formal procedures like document discovery are available. If an applicant abandons part of a claim to come within the small claims limit, the RTB will accept jurisdiction.

[Reproduced as written.]

In addition, Rule of Procedure 2.9 confirms that an applicant may not divide a claim.

Based on a review of the history of the Tenant's applications, I find the Tenant made 2 concurrent applications on October 13 and November 1, 2018. Combined, the claims exceeded the monetary jurisdiction of the director. Therefore, I find the Tenant divided her claim, contrary to Rule of Procedure 2.9. As noted in Policy Guideline #27, the director's policy is to decline jurisdiction when damage or loss exceeds the small claims limit. The Tenant's claims, which were known at the time the application was made on October 13, 2018, exceeded the monetary jurisdiction of the director and should have been brought in the BC Supreme Court.

Accordingly, I decline jurisdiction to hear the Tenant's Application.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations 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 as a result 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 each party to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement. Once that has been established, the parties must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the party did what was reasonable to minimize the damage or losses that were incurred.

The Landlord's Claim

With respect to the Landlord's claim for \$337.56 for unpaid city utilities, the Tenant acknowledged during the hearing, after being presented with the Landlord's evidence in support, that the amount claimed is due. Therefore, I grant the Landlord a monetary award of \$337.56 for unpaid utilities.

With respect to the Landlord's claim for unpaid rent in May 2018, section 26 of the *Act* confirms that a tenant must pay rent when due under a tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

In this case, I find it is more likely than not that the rent was not paid for May 2018. I rely in large part on the Landlord's ledger which confirmed payments in the months before and after May 2018 were paid by e-transfer. The Tenant did not dispute this evidence. Further, it is not consistent that the Tenant would pay rent in cash for one month when a pattern of payments by e-transfer has been demonstrated. Further, the Tenant did not refer me to any documentary evidence in support of payment in cash, such as a bank statement indicating a withdrawal on or near the date of the alleged payment. Therefore, I grant the Landlord a monetary award of \$1,855.00 for unpaid rent for May 2018.

With respect to the Landlord's claim for unpaid rent for October and November 2018, the Tenant acknowledged during the hearing that rent was not paid during these months, and that she did not vacate the rental unit until early November, 2018. There was insufficient evidence to indicate the Tenant had a right to deduct rent. Therefore, I find the Landlord is entitled to a monetary award of \$3,710.00 for unpaid rent for October and November 2018.

Having been successful, I grant the Landlord a monetary award of \$100.00 in recovery of the filing fee. In addition, I find it appropriate in the circumstances to permit the Landlord to retain the security deposit in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$4,737.50, which has been calculated as follows:

Claim	Amount allowed
<u>Unpaid Utilities:</u>	<u>\$337.56</u>
Unpaid rent::	\$5,565.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$927.50)
TOTAL:	\$4,737.50 <u>\$5,075.06</u>

The Tenant's Application

As noted above, I decline jurisdiction to hear the Tenant's Application.

Conclusion

I decline jurisdiction to hear the Tenant's Application.

The Landlord is granted a monetary order in the amount of ~~\$4,737.50~~ \$5,075.06. 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: March 13, 2019

Date of Corrected Decision: May 28, 2019

Residential Tenancy Branch