



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes: FFL MNDCL-S MNRL-S

Introduction

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

- a monetary order for unpaid rent and compensation for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

While the landlord attended the hearing by way of conference call, the tenant did not. I waited until 1:40 p.m. to enable the tenant to participate in this scheduled hearing for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. The landlord confirmed that they understood.

The landlord confirmed that the tenant was served with the landlord's application for dispute resolution hearing package on by way of registered mail on August 7, 2022 to the forwarding address provided by the tenant. The landlord provided the tracking number in their evidentiary materials, which is noted on the cover page of this decision.

In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant deemed served with the landlord's application and evidence on August 12, 2022, five days after its registered mailing. The tenant did not submit any evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent and losses associated with this tenancy?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy began on March 15, 2021, with monthly rent set at \$1,800.00, payable on the last day of the month. The landlord still holds the security deposit of \$900.00.

The tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent dated February 2, 2022 for failing to pay the February 2022 rent. The tenant did not move out, nor did they pay the outstanding rent, and the landlord was successful in obtaining an Order of Possession and a monetary order for the February 2022 rent through the Direct Request Proceeding process. The tenant failed to move out, and the landlord had to obtain the services of a bailiff to remove the tenant on May 11, 2022. The landlord filed this application to recover the unpaid rent for the remainder of this tenancy, as well as the costs associated with removing the tenant after the tenant failed to comply with the Orders granted. The landlord is also requesting to recover the cleaning costs for this tenancy.

The landlord is requesting monetary compensation as follows:

Unpaid Rent for March 2022 to May 11, 2022.	\$4,238.71
Writ of Possession Filing Costs	120.00
Bailiff Fees	3,794.23
Cleaning	200.00
Recovery of Filing Fee	100.00

Total Monetary Award Requested	\$8,452.94
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The landlord provided documentary evidence and receipts to support the above losses.

Analysis

I find that the landlord provided sufficient evidence to support that the tenant failed to move out as required by the Order of Possession dated April 19, 2022. I also find that the landlord provided sufficient evidence to support that due to the tenant's failure to comply with the *Act* and the Adjudicator, the landlord suffered further losses associated with the removal of the tenant. I accept the evidence of the landlord that the tenant did not voluntarily vacate the rental unit, which required the landlord to enforce the Order of Possession by obtaining a Writ of Possession, and paying for the services of a Bailiff. I am also satisfied that the landlord was unable to obtain vacant possession of the rental unit until May 11, 2022, and the landlord did not receive any rent for the period of March 1, 2022 to May 11, 2022.

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I find that the tenant was obligated to pay the rent as per the tenancy agreement and the *Act*. I find that the landlord provided sufficient evidence to support that no rent was paid for March 1, 2022 to May 11, 2022. On this basis, I allow the landlord's monetary claim for unpaid rent in the amount of \$4,238.71.

I find that the tenant failed to comply with the Order of Possession granted on April 19, 2022. I find that the landlord provided sufficient evidence to support the losses associated with the removal of the tenant by the bailiff after obtaining a Writ of Possession. Accordingly, I allow the landlord's monetary claim for reimbursement of the costs associated with enforcing the Order of Possession.

I am satisfied that the landlord is also entitled to recover the costs of cleaning of the rental unit at the end of the tenancy.

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 landlord was successful in their application, I find that the landlord is entitled the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenant's security deposit. 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 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, \$5.15 is payable as interest on the tenant's security deposit from March 1, 2021 when the deposit was originally paid, until the date of this decision, April 17, 2023.

Conclusion

I issue a Monetary Order in the amount of \$7,547.79 in the landlord's favour as set out in the table below.

Unpaid Rent for March 2022 to May 11, 2022.	\$4,238.71
Writ of Possession Filing Costs	120.00
Bailiff Fees	3,794.23
Cleaning	200.00
Recovery of Filing fee	100.00
Less deposit held plus applicable interest	-905.15
Total Monetary Award Requested	\$7,547.79

The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of 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: April 17, 2023

Residential Tenancy Branch