



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the landlord: as an application for a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; to keep the security deposit; and to recover the filing fee associated with his application.

By the tenant: as an application for a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; to the return of the security deposit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Is the tenant entitled to a Monetary Order, and for what amount?

Is the tenant entitled to the return of the security deposit?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a single detached home. Pursuant to a written agreement, the fixed term tenancy started on October 1st, 2010 and was to end October 1st, 2011. The rent was \$1000.00 per month and the tenant paid a security deposit of \$500.00. The landlord testified that condition inspection reports were completed at the start and the end of the tenancy however they were not produced as evidence. The tenancy ended May 31st, 2011.

The landlord stated that the tenant approached him about ending the tenancy May 31st, 2011, because he could no longer afford the rent; the landlord said that he agreed provided that he could find new tenants to take over the lease without the loss of rental income. He said that the tenant did not facilitate this transition and that as a result the house was not re-rented until July 1st, 2011. The landlord said that he advertised the rental unit as soon as he received the tenant's written notice to end the tenancy. He said that during move out, he observed a 6 inch tear in the linoleum by the entrance to the laundry room.

The landlord's filed a monetary claim as follows: \$1000.00 for the loss of one month's rent; \$75.00 for linoleum repairs; and \$50.00 to recover the filing fee for a claim totalling \$1125.00. Concerning the linoleum, the landlord said that the repairs actually cost only \$20.00.

The tenant testified that he ended the tenancy early due to health reasons; he said that he is applying for the return of his security deposit because he gave the landlord notice, and that the landlord agreed. He is also claiming the return of a \$25.00 deposit for a garage door opener that he returned to the landlord. Concerning the damaged linoleum, the tenant stated that the tear was located under the washing machine, which was installed before he moved in; he said that he did not move the machine and could not see how he should be responsible for that damage.

Analysis

Section 45(2) of the *Residential Tenancy Act* states in part that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

Due to unforeseen circumstances, the tenant ended the tenancy early; however these circumstances were not as a result of the landlord's breach of the Act, regulation or tenancy agreement. The *Guide for Landlords and tenants in British Columbia* also specifies that a tenant who ends a fixed term tenancy early without the landlord's agreement can be held accountable for any loss. Accordingly I find that the landlord is entitled to recover the loss of rental income for the month of June 2011.

The landlord provided no evidence to support his claim for damage to the linoleum, such as condition inspection reports, photographs or receipts; therefore I dismiss this portion of the landlord's claim.

Concerning the \$25.00 deposit for the garage opener; the landlord confirmed having received the opener from the tenant and therefore the tenant is entitled to the return of that portion of his deposit.

Conclusion

The landlords established a claim of \$1000.00. I authorize the landlord to keep the tenant's \$500.00 security deposit for a balance owing of \$500.00.

Under his application, the tenant established a claim of \$25.00.

Pursuant to Section 72 of the Act, I set off the amount awarded to the tenant against the amount awarded to the landlords, and I grant the landlords a monetary order for the balance of \$475.00.

This Order may be registered in the Small Claims Court and enforced as an order of that Court.

Since the parties were partially successful with their respective application, I decline to make an order regarding the filing fees.

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: September 20, 2011.

Residential Tenancy Branch