



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR; MND; MNDC, MNSD; FF

Introduction

This is the Landlord's application for a Monetary Order for damages, unpaid rent and loss of revenue; to retain the security deposit in partial satisfaction of his monetary claim; and to recover the cost of the filing fee from the Tenant.

The Landlord gave affirmed testimony at the Hearing.

The Landlord testified that the Tenant did not provide a forwarding address at the end of the tenancy. He stated that he searched two on-line telephone directories, using the Tenant's phone number, and both of them indicated the same address for the Tenant. He testified that he mailed the Notice of Hearing documents the Tenant at that address, via registered mail, on September 28, 2011. He stated that he also mailed copies of his documentary evidence to the Tenant by registered mail, on October 27, 2011. The Landlord testified that the Notice of Hearing documents were returned to him, unclaimed. The Landlord provided the registered mail receipts and tracking numbers; printouts of both on-line searches; and a copy of the Tenant's dishonoured cheque for July, 2011, in evidence. The cheque indicates the Tenant's phone number, which is the same number used to search both on-line sites.

Based on the Landlord's documentary evidence and affirmed testimony, pursuant to the provisions of Section 71(2)(b), I am satisfied that the Tenant was sufficiently served with the Notice of Hearing documents and documentary evidence by registered mail. The Canada Post tracking system indicates that a Notice was left for the Tenant on September 29, 2011, indicating where the documents could be picked up, and that a final Notice was left on October 5, 2011. Failure to accept delivery of documents sent by registered mail does not affect the service provisions of the Act. Service in this manner is deemed to be effected 5 days after mailing the documents whether or not the recipient chooses to accept delivery. Despite being deemed served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Hearing proceeded in his absence.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

The Landlord gave the following testimony and evidence:

This tenancy began on February 1, 2010. A copy of the tenancy agreement was provided in evidence. Monthly rent was \$750.00 per month, due the first day of each month. The Tenant paid a security deposit in the amount of \$375.00 as follows: \$200.00 cash paid January 15, 2010 and \$175.00 by cheque on January 22, 2010.

The Landlord testified that on June 15, 2011, the Tenant provided him with written notice that he would be moving out of the rental unit on June 26, 2011. The Landlord provided in evidence a copy of the Tenant's notice to end the tenancy.

The Landlord testified that the parties performed a move-in condition inspection report on February 2, 2010. He stated that he attended the rental unit at 6:00 p.m. on June 26th for the move-out condition inspection with the Tenant, but the Tenant was not there. He stated that he posted a Notice of Final Inspection Opportunity for July 1, 2011, at 11:00 a.m. on the Tenant's door and did the inspection by himself on July 1, 2011. The Landlord provided a copy of the move-in Condition Inspection Report and the Notice of Final Inspection Opportunity in evidence.

The Landlord stated that it was evident that the Tenant smoked in the rental unit, even though it was prohibited in the tenancy agreement. He stated that the walls and ceilings were painted five months before the Tenant moved in and that they required treatment and re-painting for smoke stains and odor due to the Tenant's breach of the tenancy agreement. He stated that the carpets were also only 5 months old when the Tenant moved into the rental unit, and that the living room carpet had to be replaced because of cigarette burns and wax/dirt stains. He stated that the remaining carpets were not steam cleaned or shampooed at the end of the tenancy. The Landlord provided a copy of the Condition Inspection Report for the prior occupant, which indicates that the carpets and paint were new when that tenancy began on September 3, 2009, and that the carpets were professionally cleaned at the end of that tenancy (January 30, 2010).

The Landlord testified that the Tenant broke an interior window on December 4, 2010, and had advised the Landlord that he would repair it, but did not. The Landlord testified that the rental unit was filthy and that he and a cleaner spent a total of 35.5 hours cleaning and repairing the rental unit. He stated that the Tenant did not return the keys to the rental property.

The Landlord testified that the Tenant's rent cheque for April and July, 2010, were returned to the Landlord "NSF". He stated that the Tenant's cheque for July 2011 rent was returned "dishonoured". The Landlord seeks compensation in the amount of \$25.00 per cheque.

The Landlord testified that the rental unit was re-rented July 8, 2011.

The Landlord provided receipts and photographs in support of his monetary claim for damages.

The Landlord seeks a monetary order, calculated as follows:

NSF fees (pursuant to clause 10 of the tenancy agreement)	\$75.00
Cost to repair damaged patio door latch	\$32.82
Estimate to replace damaged sink cutting board	\$30.00
Estimate to replace neighbour's broken flower pot	\$35.00
Cost to clean bedroom carpet	\$106.40
Cost to replace living room carpet (after deducting \$155.91 for age of carpet)	\$779.53
Repairing, priming and painting walls and ceilings (after deducting \$104.16 for age of paint)	\$516.64
Cost of hiring cleaner	\$295.92
Landlord's labour for cleaning and making repairs	\$537.50
Replacing burned out light bulbs	\$3.00
Rekeying door locks and deadbolt, keys for doors and mail box	\$67.85
Loss of revenue from July 1, 2011 to July 7, 2011	\$190.00
Costs of service by registered mail	\$20.84
Recovery of filing fee	\$50.00
Less set-off of security deposit	<u>-\$375.00</u>
TOTAL	\$2,561.50

Analysis

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,

2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Claim for loss of revenue and returned cheques

Based on the Landlord's undisputed testimony and documentary evidence, I find that the Tenant did not end the tenancy in accordance with the provisions of Section 45 of the Act and that the Landlord has suffered a loss as a result of the actions of the Tenant in violation of the Act. I find that the Landlord has established his claim for loss of revenue, calculated as follows:

$$(\$750.00 / 31 \text{ days in July}) \times 7 \text{ days (rental unit re-rented July 8)} = \mathbf{\$169.35}$$

The tenancy agreement provides for a service fee of \$25.00 for late payment, returned or NSF cheques in the amount of \$25.00. Therefore, I find that the Landlord has established this part of his claim.

Claim for damages

The Landlord did not provide sufficient evidence with respect to his claim for the cost of replacing the sink cutting board or the neighbour's broken flower pot. For example, he did not provide a copy of an estimate for the cost of a new cutting board or the neighbour's flower pot. The Landlord testified that he has not replaced the neighbour's flower pot and therefore he has shown no loss with respect to this portion of his claim.

There is no provision in the Act for recovery of the cost of registered mail and this portion of the Landlord's application is dismissed.

With respect to the remainder of the Landlord's claim for damages, I find that the Landlord has provided sufficient evidence to prove his claim.

The Landlord provided two different estimates for the cost of replacing the damaged interior window in the amounts of \$161.25 and \$196.00. I allow this portion of the Landlord's claim in the amount of **\$161.25**.

The Residential Tenancy Policy Guidelines provide that carpets have a useful life of 10 years and indoor paint has a useful life of 4 years. The Landlord did not provide

evidence that the carpet or paint in the rental unit was of superior quality and therefore, I find that he has established this portion of his claim in the following amounts:

Carpet (materials and installation): \$935.44
 Adjusted ($\$935.44 \times \frac{99 \text{ months remaining life}}{120 \text{ months useful life}}$) = **\$771.74**

Paint (including repairs and supplies) = \$620.80
 Adjusted ($\$620.80 \times \frac{27 \text{ months remaining life}}{48 \text{ months useful life}}$) = **\$349.20**

The Landlord provided a detailed breakdown of the hours he spent repairing and cleaning the rental unit, which totaled 21.5 hours. This included (in part) one hour for picking up additional keys and new mail box lock; one hour for taking an abandoned propane tank to the dump; and three hours for vacuuming the new carpet and hanging the curtains. He charged out his time at \$25.00 per hour. I find that the Landlord's labour estimate is high, however I am satisfied that he did put in considerable time cleaning and repairing the rental unit. I allow this portion of his claim, calculated as follows:

12 hours @\$20.00 per hour = **\$240.00**

I allow the remainder of the Landlord's claim for damages in the amounts claimed.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of the Landlord's monetary award. No interest has accrued on the security deposit.

The Landlord has been successful in his application and is entitled to recover the cost of the \$50.00 filing fee from the Tenant.

I hereby provide the Landlord a Monetary Order against the Tenant, calculated as follows:

Loss of revenue	\$169.35
Cost to replace damaged window	\$161.25
Cost to repair damaged patio door latch	\$32.82
Cost to shampoo bedroom carpet	\$106.40
Cost to replace living room carpet	\$771.74
Repairing, priming and painting walls and ceilings	\$349.20
Cost of hiring cleaner	\$295.92

Landlord's labour for cleaning and repairs	\$240.00
Cost to replace burned out light bulbs	\$3.00
Cost to rekey door locks and deadbolt, keys for doors and mail box	\$67.85
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$2,322.53
Less security deposit	<u>- \$375.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$1,947.53

Conclusion

I hereby provide the Landlord a Monetary Order in the amount of **\$1,947.53** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: January 10, 2012.

Residential Tenancy Branch