



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC MNR MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution filed on December 05, 2013, by the Landlord to obtain a Monetary Order for damage to the unit, site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for unpaid rent or utilities, and to keep all of the security deposit.

The Landlord submitted documentary evidence which indicates the Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, first on December 9, 2013 by courier and then on December 21, 2013, by registered mail. Canada Post receipts and tracking information were provided in the Landlord's evidence which show that the Tenant signed for the package on December 30, 2013. Based on the submissions of the Landlord I find the Tenant was served notice of this proceeding, in accordance with the Act; and I proceeded in the Tenant's absence.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to a Monetary Order?

Background and Evidence

The Landlord submitted evidence that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on March 1, 2012 and was set to expire on February 28, 2013. The Tenant was required to pay rent of \$1,800.00 on the first of each month and on February 28, 2012 the Tenant paid \$900.00 as the security deposit.

The Landlord testified that when the Tenant failed to pay the August 2012 rent he e-mailed her on August 9, 2012 and she advised she was out of town. Then on August

13, 2012 the Tenant sent an e-mail that stated that they would be moving out by September 1, 2012.

The Landlord argued that the Tenant vacated the unit by August 30, 2012, without paying the August rent of \$1,800.00 and without providing her forwarding address. The Landlord stated that he had to hire a tracing service to locate the Tenant for which he is now claiming the cost. He clarified that the invoice from the location company shows the balance owing after a deposit of \$100.00 had been made and adding tax so the total amount paid was actually \$283.75.

The Landlord stated that he regained possession of the rental unit on August 30, 2012 and had his friends inspect the unit. They found that the Tenant had left the unit requiring some cleaning and repairs. The Landlord pointed to his photographic evidence which supports that there was damage to several walls, a broken door, and some damage to the outside wall. These damages were repaired by a contractor for about \$400.00 but the Landlord was not able to obtain a receipt.

In addition to the above, the Landlord stated that he was seeking \$100.00 to recover the strata move-in fee. He did not submit a receipt for this claim and argued that it is an automatic charge from the strata corporation.

Analysis

Upon consideration of the evidence before me, in the absence of any evidence from the Tenant who did not appear, despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlord and corroborated by their documentary evidence.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement, despite any disputes they may have with the landlord.

In this case the Tenant remained in possession of the rental unit until August 30, 2012 and she did not pay the rent of \$1,800.00 that was due August 1, 2012. Accordingly, I award the Landlord the unpaid rent in the amount of **\$1,800.00**.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Based on the evidence before me I accept that the Tenant left the unit requiring some cleaning and repairs. Accordingly, I find the Tenant has breached sections 32(3) and 37(2) of the Act, causing the Landlord to suffer a loss for repairs.

The Landlord submitted evidence of a receipt from the location company which indicates he was required to pay \$283.75 to locate the Tenant in order to proceed with this application to recover losses incurred as the result of the Tenant's breach of the Act. Accordingly I award the Landlord for his loss in the amount of **\$283.75**.

Upon review of the remaining items being claimed, I find the Landlord has provided insufficient evidence to prove or verify the actual value of the repair costs and the strata fee. The Landlord failed to provide invoices or receipts for the work which was done, and did not provide an invoice to verify the charges from the strata.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Policy Guideline #16 states that a Dispute Resolution Officer may award "nominal damages" which are a minimal award. These damages may be

awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

As per the foregoing, in the absence of actual receipts, I find the Landlord is entitled to nominal damages in the amount of **\$25.00**.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Unpaid August 2012 rent	\$1,800.00
Location fees	283.75
Nominal damages	<u>25.00</u>
SUBTOTAL	\$2,108.75
LESS: Security Deposit \$900.00 + Interest 0.00	<u>-900.00</u>
Offset amount due to the Landlord	<u>\$1,208.75</u>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$1,208.75**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims 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: March 28, 2014

Residential Tenancy Branch

