



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord – MND, MNSD, MNDC, FF

For the tenant – MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. The tenant applied for a Monetary Order to recover the security deposit and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord's agent (the landlord) attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord permitted to keep all or part of the security deposit?
- Is the tenant entitled to a Monetary Order to recover the security deposit?

Background and Evidence

The parties agreed that this tenancy started on July 01, 2015 and was renewed for a further fixed term of a year on October 01, 2015. Rent for this unit at the end of the tenancy was \$1,650.00 per month due on the 1st of each month. The tenant paid a security deposit of \$775.00, a pet deposit of \$350.00 on June 08, 2015 and a further security deposit of \$50.00 in August 2015. The tenant provided his forwarding address to the landlord at the previous hearing on January 14, 2016. The tenant provided a new forwarding address at this hearing.

The landlord testified that on November 08, 2015 there was a fire in the building and 16 tenants including this tenant had to be evacuated and relocated. When the fire report came back it stated that the fire had started in this tenant's unit. A fire officer had interviewed the tenant and the tenant admitted he had let a candle burning with incense oil and had then left the unit to walk his dog and visit with a neighbour. The tenant returned to his unit upon activation of the building alarm to find thick smoke.

The landlord testified that there was over one million dollars' worth of damage done to the building. The landlord testified that they suffered additional admin costs due to sorting out the fallout from the fire, relocating tenants and arranging for deposit refunds and for tenants to retrieve belongings, dealing with fire insurance adjusters and

mortgagees. The landlord testified that the building owner spent 46.40 hours dealing with these issues and seeks to recover \$45.63 an hour to an amount of \$2,117.23.

The landlord testified that another employee who earns \$1,000.00 a month in his normal line of work for the owner also spent time dealing with issues from this fire and between November 01 to November 15, 2015 he was paid \$1,000.00 plus an additional amount in bonus of \$250.00 for extra work put in and between November 16 to November 30, 2015 he was paid \$1,000.00.

The landlord testified that the office staff also put in hours of work dealing with the fire issues which cost the owner additional amounts of admin time and although the office staff were only paid their monthly salary they had to dedicate time to deal with the fire issues. The landlord therefore seeks to recover \$5,000.00 from the tenant for these wages of the owner and staff.

The landlord satisfied that they had to pay their insurance deductible of \$1,000.00 as shown on the summary of coverage from the landlord's insurance company. The landlord seeks to recover this from the tenant.

The landlord seeks an Order to be permitted to keep the tenant's security and pet deposits to a total amount of \$1,175.00. This amount will be offset against the landlord's claim. The landlord also seeks to recover the filing fee of \$100.00 from the tenant.

The tenant testified that he had been cleaning in his unit and had lit an incense candle which had burning for some time. The tenant was going away so he took the dog for a walk and then went to give his key to a neighbour. The tenant agreed he did leave the candle burning unattended.

The tenant testified that when he returned to the unit he saw smoke and went to get the fire extinguisher from the hall. This fire extinguisher was missing so the tenant went to get one from the floor below. When he returned he opened the unit door and everything

was engulfed in flame. The tenant testified that there was also no working smoke detector in his unit and he had emailed the building manager about this several times without a response.

The tenant agreed that there is some responsibility on his part for the fire but he disputes that he is responsible to pay wages for the owner and staff when it is wages they would be receiving anyways. Furthermore, some of the staff member's wages are from November 01, 2015, before the fire even started.

The tenant testified that he did not have tenant's insurance as his insurance company would not cover him due to the condition of the building. The tenant testified that he lost everything in the fire.

The landlord disputed the tenant's claims concerning the fire extinguisher and smoke detector. The landlord testified that the building had a fire inspection in August, 2015 and there were no deficiencies listed at that time and it was also not noted that the tenant's unit did not have a smoke detector.

The tenant testified that he had applied to recover the security and pet deposits; however, the tenant agreed at the hearing that the landlord can keep his security and pet deposit of \$1,175.00 to cover the landlord's insurance deductible and some of the additional wages for one staff member.

The tenant testified that he had also claimed to recover the rent paid for 22 days in November to an amount of \$1,210.00. As the tenancy ended on November 08, 2015 due to the fire the tenant had felt he should be entitled to recover this rent; however, the tenant agreed at the hearing that the landlord may also retain any rent due to the tenant.

The tenant seeks to recover his filing fee of \$100.00.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

There is no disagreement that the tenant's actions in leaving a candle burning unattended caused a fire which devastated this building and caused a considerable amount of damage. Consequently, I find the tenant is responsible for any costs incurred by the landlord with his insurance company and I find the landlord is entitled to recover his insurance deductible of **\$1,000.00** from the tenant.

With regard to the landlord's claim for \$5,000.00 for wages for the owner and staff, I am not persuaded by the evidence before me that the landlord incurred additional costs in dealing with this fire in wages. I find the owner's costs to deal with tenancy issues and damage resulting from the fire is part of the cost of doing business as a landlord. With regard to the landlord's claim for staff wages; the landlord testified that the staff were paid their monthly salaries but had to dedicate additional time to dealing with the fire issues. The landlord has not shown that the office staff were paid anything other than their normal monthly salary and therefore as this is a salary they would have been paid regardless of the fire, then no further loss has been experienced by the landlord. I will however, consider the additional wages paid to one member of staff in the form of a bonus for dealing with fire issues above and beyond his normal monthly wage. I therefore award the landlord this additional cost in wages of **\$250.00**.

As the landlord's claim has some merit I find the landlord is also entitled to recover his filing fee of **\$100.00** from the tenant pursuant to s. 72(1) of the *Act*.

With regard to the security and pet deposits; I find the tenant agreed at the hearing that the landlord may retain the security and pet deposit. I therefore Order the landlord to keep the amount of **\$1,175.00**.

The tenant had applied to recover double the security and pet deposits; I refer the parties to s. 38(1) of the *Residential Tenancy Act (Act)* that says that a landlord has 15 days from the end of the tenancy or from the date that the landlord receives the tenant's forwarding address in writing to either return the security and pet deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If the landlord does not do either of these things and does not have the written consent of one or all of the tenants to keep all or part of the security and pet deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security and pet deposit to the tenant.

Therefore, based on the above and the evidence presented I find that the landlord did not receive the tenant's forwarding address until January 14, 2016 when it was provided at the hearing held on that date. As a result, the landlord had until January 29, 2016 to return all of the tenant's security and pet deposit or file a claim to keep them and the landlord did file his application on January 15, 2016. As the landlord did file within the allowable time frame then the tenant is not entitled to have the deposits doubled under s. 38(6)(b) of the *Act*.

The tenant's application to recover double the security and pet deposits is therefore dismissed.

With regard to the tenant's application to recover rent; as the tenant's details of the dispute do clearly inform the landlord of the tenants intention to seek a Monetary Order for rent for November I will allow this section of the tenant's claim to be heard even though the tenant did not check the box for money owed or compensation for damage or loss. However, at the hearing the tenant also agreed the landlord could keep any rent due back to the tenant towards the landlord's losses due to this fire. Consequently, this section of the tenant's claim is dismissed.

As the tenant's claim is unsuccessful the tenant must bear the cost of filing his own application. A Monetary Order has been issued to the landlord for the following amount:

Insurance deductible	\$1,000.00
Additional wages for staff	\$250.00
Filing fee	\$100.00
Less security and pet deposits	(-\$1,175.00)
Total amount due to the landlord	\$175.00

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. I Order the landlord to retain the tenant's security and pet deposits to a total amount of **\$1,175.00**. A copy of the landlord's decision will be accompanied by a Monetary Order for the balance due of **\$175.00** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

The tenant's application is dismissed without leave to reapply

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 08, 2016

Residential Tenancy Branch