



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 09655634 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

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 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided undisputed affirmed testimony. The landlord's agent (the landlord) stated that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on February 18, 2016. The tenant confirmed receipt of both packages in this manner. The landlord also filed an application for an amendment to an application on February 25, 2016 via Canada Post Registered Mail. The tenant also confirmed receipt of this amended application in this manner. The tenant did not submit any documentary evidence. As both parties have attended and have confirmed receipt of the submitted documentary evidence, I am satisfied that both parties have been properly served as per sections 88 and 89 of the Act.

At the end of the hearing the tenant stated that she has since moved and has provided a new mailing address for delivery of this decision. The tenant's mailing address shall be updated to reflect the new address provided by the tenant.

During the hearing it was clarified with both parties that the landlord had returned the \$625.00 security deposit to the tenant. As such, the landlord's amendment shall be dismissed as she cannot retain something that was returned to the tenant.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on September 15, 2015 on a fixed term tenancy ending on September 1, 2016 as shown by the submitted copy of the signed tenancy agreement dated September 5, 2015. The monthly rent was \$1,250.00 payable on the 1st day of each month and a security deposit of \$625.00 was paid on September 5, 2015. Both parties confirmed that the landlord return the \$625.00 security deposit to the tenant after the end of tenancy.

The landlord seeks a monetary claim of \$650.00 which consists of:

\$225.60	Unpaid Utilities (Oct7-Dec7)
\$90.69	Unpaid Utilities (Dec7-Feb7)
\$333.71	Pro-Rated Loss of Rental Income February 2016 for 5 days

The landlord provided undisputed affirmed testimony that the tenant failed to pay utilities as claimed during the tenancy. The tenant confirmed not paying the utilities in her direct testimony stating that it was in response to the poor living conditions.

The landlord states that the tenancy ended on January 31, 2016 after receiving 5 days' notice to end the tenancy from the tenant. The tenant confirmed that only 5 days' notice was given to the landlord to end the tenancy. Both parties confirmed that the landlord was able to re-rent the unit for February 6, 2016. The landlord stated that she lost 5 days of rent but was able to re-rent the unit for \$1,300.00 per month over the term of the remaining portion of the fixed term tenancy ending on September 1, 2016 except the first month in which the landlord made an agreement with the new tenant for \$800.00 for the month of February due to the loss of the initial 5 days. The landlord clarified that she understood that her monetary claim of \$650.00 would limit her monetary claim to the \$333.71 difference as opposed to the \$450.00 original difference in monthly rent.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must

then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the undisputed affirmed evidence of both parties and find on the landlord's first item of claim for \$316.29 in unpaid utilities has been established. The tenant confirmed in her direct testimony that she failed to pay the utilities owed as claimed by the landlord over a dispute on the conditions of the rental unit.

On the landlord's second portion of the monetary claim of \$333.71 which is for the loss of rental income, I find that the landlord has failed. The landlord chose to re-rent the unit at \$800.00 for the 1st month. The landlord did not re-rent the unit at the original rate of \$1,250.00 and instead re-rented it at the monthly rate of \$1,300.00. The landlord in re-renting at the increased rental rate of \$1,300.00 for the period until September 1, 2016 made \$450.00 that she otherwise would not have. As such, I find that the landlord suffered no loss of rental income. This portion of the landlord's claim is dismissed.

The landlord having been partially successful is entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted a monetary order for \$416.29.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the 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: September 27, 2016

Residential Tenancy Branch