



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, MNRL-S, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on January 17, 2019 the Application for Dispute Resolution, the Notice of Hearing, and 6 pages of evidence the Landlord submitted to the Residential Tenancy Branch on January 13, 2019 was personally served to the Tenant by a process server. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

As these documents were properly served to the Tenant, the evidence was accepted as evidence for these proceedings and the hearing proceeded in the absence of the Tenant.

In February of 2019 the Landlord submitted 2 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was not served to the Tenant. As the evidence was not served to the Tenant, it was not accepted as evidence for these proceedings. The Landlord was advised that I could not view this evidence during this adjudication, as it was not served to the Tenant.

In April of 2019 the Landlord submitted numerous pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was not served to the Tenant.

As the evidence was not served to the Tenant, it was not accepted as evidence for these proceedings. The Landlord was advised that I could not view this evidence during this adjudication, as it was not served to the Tenant.

The Landlord was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. He was advised of his legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, to compensation for unpaid rent, and to keep all or part of the security deposit?

Background and Evidence

The Landlord stated that:

- the tenancy began on July 01, 2018;
- rent of \$1,000.00 was due by the first day of each month;
- the Tenant paid a security deposit of \$500.00;
- on December 02, 2018 he personally served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent;
- the Notice to End Tenancy declared that the Tenant must vacate the rental unit by December 12, 2018;
- the Tenant did not dispute the Notice to End Tenancy;
- at a previous hearing he was granted an Order of Possession for the rental unit;
- on December 14, 2018 the Tenant sent him a text message, in which he told him he would vacate the rental unit during the last week of the month;
- on December 26, 2018 the Tenant sent him a text message, in which he told him he had vacated the rental unit;
- he did not advertise the rental unit until December 27, 2018 because he was not certain when the unit would be vacated; and
- he re-rented the unit for January 15, 2019.

The Landlord is seeking compensation for lost revenue for the period between January 01, 2019 and January 14, 2019. He stated that the Tenant's failure to vacate the rental unit by December 12, 2018 resulted in him losing revenue for the first two weeks of January of 2019.

The Landlord is seeking compensation for cleaning the rental unit. The Landlord stated that the rental unit was extremely dirty at the end of the tenancy. He stated that he and

his wife spent 24 hours cleaning the rental unit. He stated that he also paid a third party \$240.00 to clean the rental unit.

The Landlord stated that he submitted a receipt for the money he paid to the third party for cleaning. Residential Tenancy Branch records show that the Landlord submitted receipts to the Residential Tenancy Branch on April 04, 2019. As this evidence was included with the evidence submission that the Landlord stated was not served to the Tenant, it was not considered as evidence during the adjudication.

The Landlord is seeking compensation for painting the rental unit. The Landlord stated that the rental unit required painting because the walls were damaged and extremely dirty at the end of the tenancy. He stated that he spent approximately 20 hours painting. He stated that he also incurred costs for painting supplies.

The Landlord stated that he submitted receipts for painting supplies. Residential Tenancy Branch records show that the Landlord submitted receipts to the Residential Tenancy Branch on April 04, 2019. As this evidence was included with the evidence submission that the Landlord stated was not served to the Tenant, it was not considered as evidence during the adjudication.

The Landlord is seeking compensation for replacing blinds and a window that were damaged during the tenancy. He stated that he spent approximately 20 hours completing these repairs. He stated that he also incurred costs for replacing the blinds and the broken window.

The Landlord stated that he submitted receipts for costs associated to replacing the blinds and window. Residential Tenancy Branch records show that the Landlord submitted receipts to the Residential Tenancy Branch on April 04, 2019. As this evidence was included with the evidence submission that the Landlord stated was not served to the Tenant, it was not considered as evidence during the adjudication.

The Landlord applied for compensation for costs associated to travelling to the rental unit to make the aforementioned repairs. The Landlord stated that he lives in a different city and had to travel a considerable distance to complete the aforementioned repairs.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages

includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the undisputed evidence I find that a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was personally served to the Tenant on December 02, 2018, which declared that he must vacate the rental unit by December 12, 2018.

Section 46 of the *Act* stipulates that a Tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. There is no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant was required to vacate the rental unit by December 12, 2018.

I find that the Tenant fundamentally breached the tenancy agreement when the Tenant did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when the Tenant did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that the delay in vacating the rental unit made it difficult, if not impossible, for the Landlord to find new tenants for January 01, 2019. I therefore find that the Tenant must compensate the Landlord for the loss of revenue the Landlord experienced for the first two weeks of January, in the amount of \$500.00.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to leave the rental unit in reasonably clean condition at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for the 24 hours he and his wife spent cleaning the rental unit, at an hourly rate of \$25.00 per hour, which is \$600.00.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to clean and repair the walls that were damaged during the tenancy. I therefore find that the Landlord is entitled to compensation for the 20 hours he spent painting the rental unit, at an hourly rate of \$25.00 per hour, which is \$500.00.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the blinds and window that were damaged during the tenancy. I therefore find that the Landlord is entitled to

compensation for the 20 hours he spent repairing the blinds and window, at an hourly rate of \$25.00 per hour, which is \$500.00.

In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant, whenever compensation for damages is being claimed. As the Landlord did not serve the Tenant with a copy of the receipt that shows he paid a third party \$240.00 for cleaning or copies of receipts for painting supplies, blinds, or the window, I cannot consider that evidence during this adjudication. As I do not have documentary evidence that corroborates the Landlord's testimony that he paid \$240.00 for cleaning; that he incurred costs for painting supplies, that he incurred costs of replacing the blinds; or that he incurred costs for replacing the window, I find that the Landlord failed to establish these costs. When receipts are available, or should be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to serve those receipts to the other party. I therefore dismiss the Landlord's claim for cleaning costs of \$240.00; for the cost of painting supplies; for costs associated to replacing the blinds; and costs associated to repairing the window.

While I accept that the Landlord incurred costs travelling to the rental unit to complete repairs, I find that those costs are more directly associated to the Landlord's decision to conduct business as a landlord in a location that is not near his home. As these costs are more directly related to the Landlord's choice of where to conduct business than the Tenant's failure to comply with the *Act*, I find that the Tenant is not obligated to compensate the Landlord for these expenses.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$2,200.00, which includes \$500.00 in lost revenue, \$600.00 for cleaning; \$500.00 for painting; \$500.00 for replacing blinds/repairing a window; and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$500.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$1,700.00. In the event the Tenant does not voluntarily comply with this Order, it may

be served on the Tenant, 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 *Act*.

Dated: May 06, 2019

Residential Tenancy Branch