



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MND, MNDC, MNR, MNSD, FF

Introduction

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the address noted on the Application, on July 28, 2008. A copy of the receipt, with a tracking number, was submitted as evidence. The Canada Post website shows the mail was refused by the recipient and was returned to the sender on July 30, 2008. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for unpaid rent, a monetary Order for loss of rent; a monetary Order for the costs associated to ending the fixed term tenancy early; a monetary Order for fees associated to a NSF cheque; a monetary Order for damages to the rental unit; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Act*.

Background and Evidence

The Landlord submitted a fixed term tenancy agreement that indicated this tenancy began on March 01, 2007 and ended on August 31, 2007. The Agent for the Landlord stated that the Tenant agreed to enter into a new fixed term tenancy that began on September 01, 2007 and ended on August 31, 2008. This renewal document was not submitted in evidence prior to the hearing, however the Agent was given the opportunity to submit the renewal document in support to corroborate her oral evidence.

The Agent for the Landlord stated that the Tenant was required to pay monthly rent of \$1,295.00, and that he paid a security deposit of \$647.50 on March 01, 2007.

The Agent for the Landlord stated that the Tenant vacated the rental unit without giving notice of his intent to vacate, likely at the end of September or in the first few days of

October of 2007. She stated that the post dated cheque she had for the Tenant for October rent was returned to her as there were insufficient funds in the Tenant's bank account.

The Landlord is claiming compensation for loss of rent for November of 2007, as new tenants were not located for the rental unit until December 01, 2007. The Agent for the Landlord stated that she did not determine that the Tenant had abandoned the rental unit until the end of October of 2007, at which time she advertised the rental unit.

The Landlord is claiming compensation, in the amount of \$1,295.00, for re-leasing costs. Section 13 of the tenancy agreement shows that the Tenant agreed to pay this re-leasing cost.

The Landlord is claiming compensation, in the amount of \$25.00, for a cheque, dated October 01, 2008, which was returned to the Landlord due to insufficient funds. Section 14 of the tenancy agreement authorizes the Landlord to charge a \$35.00 fee for cheques that are returned due to insufficient funds.

The Landlord is claiming compensation, in the amount of \$210.00, for cleaning the rental unit. The Landlord submitted photographs that clearly show the rental unit was not cleaned at the end of the tenancy. The Agent for the Landlord stated that it took six hours to clean the rental unit, at a rate of \$35.00 per hour.

The Landlord is claiming compensation, in the amount of \$50.00, for disposing of personal property that was left behind in the rental unit. The Landlord submitted photographs that clearly show that a significant amount of property was left in the rental unit. The Agent for the Landlord stated that the \$50.00 is for the labour of breaking down the furniture and disposing of it in their disposal bins.

The Landlord is claiming compensation, in the amount of \$176.55, for cleaning the carpets in the rental unit. The Landlord submitted photographs that clearly show the rental unit was not cleaned at the end of the tenancy. The Landlord submitted a receipt to show that the above expense was incurred.

The Landlord is claiming compensation, in the amount of \$250.00, for reprogramming the garage door opener for approximately 60 occupants, as the Tenant did not return the garage door opener; and for replacing the lock on the rental unit, as the Tenant did not return his keys. The Landlord stated that the majority of this expense was for labour associated to replacing the lock and reprogramming the garage door openers for other occupants of the residential complex.

Analysis

In the absence of evidence to the contrary, I find that the Tenant vacated the rental unit without notice, and that he ended this tenancy prior to the end of the fixed term tenancy agreement. I find that the Tenant did not give proper notice to end this tenancy and that he must compensate the Landlord for any damages that flow from his non-compliance with the *Act*.

I find that the Landlord suffered a loss of rent for October of 2007 because the Landlord was not aware that the Tenant had vacated the rental unit, which prevented the Landlord from finding a new tenant for that month. I therefore find that the Tenant must compensate the Landlord for loss of rent for October, in the amount of \$1,295.00.

I find that the Landlord suffered a loss of rent for November of 2007 because the Landlord did not have time to find a new tenant for November, due to the fact that they were not aware that the Tenant was vacating the rental unit. I therefore find that the Tenant must compensate the Landlord for loss of rent for November, in the amount of \$1,295.00.

I find that the liquidated damages clause in the tenancy agreement is a reasonable pre-estimate of loss at the time the Tenant entered into this tenancy agreement. Therefore I find that the liquidated damages clause is reasonable, and I find that the Tenant must pay the Landlord \$1,295.00 to compensate the Landlord for re-leasing the rental unit.

Section 7(1)(d) of the Regulation stipulates that a landlord can charge an administration fee of not more than \$25.00 for the return of a tenant's cheque. Section 7(2) of the Regulation stipulates that a landlord can only charge this fee if the tenancy agreement provides for this fee.

The tenancy agreement provides for a \$35.00 NSF fee, which is not authorized by the Regulation. I find that condition of the tenancy agreement regarding NSF fee does not comply with the legislation, and therefore I dismiss the Landlord's application for a monetary Order for the return of the NSF cheque. To be enforceable, the tenancy agreement must stipulate that the Tenant agrees to an NSF fee of \$25.00.

I find that the photographs submitted by the Landlord clearly establish that the Tenant did not comply with section 37(2) of the *Act*, when he did not properly clean the rental unit at the end of the tenancy. Therefore, I find that he must compensate the Landlord for the costs associated with his non-compliance with the *Act*. In these circumstances, I find that the Landlord is entitled to \$210.00 for general cleaning expenses; \$50.00 for disposing of property left by the Tenant; and \$176.55 for cleaning the carpets, all of which are reasonable expenses for cleaning a rental unit that was left in this condition.

In the absence of evidence to the contrary, I find that the Tenant did not comply with section 37(2) of the *Act*, when he did not return the keys and the garage door opener at the end of the tenancy. Therefore, I find that he must compensate the Landlord for the costs associated with his non-compliance with the *Act*. In these circumstances, I find that the Landlord is entitled to \$250.00 for changing the locks and for re-programming the garage door opener, which are reasonable expenses for the labour expended.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. I dismiss the Landlord's application for the filing fee from a previous Application for Dispute Resolution in relation to this tenancy, as I have no jurisdiction to award costs from the previous hearing.

I find that the Landlord is entitled to retain the Tenant's security deposit plus interest, in the amount of \$662.99, in partial satisfaction of the monetary claim.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$4,621.55, which is comprised on \$2,590.00 as compensation for loss of rent, \$1,295.00 in liquidated damages for ending the fixed term tenancy early; \$686.55 in damages and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Landlord will be retaining the Tenant's security deposit plus interest, in the amount of \$662.99, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$3,958.56. In the event that the Tenant does not 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.

Date of Decision: September 30, 2008
