

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNDC MND FF MNSD

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence on the case file prior to the Hearing. The Landlord gave affirmed evidence and this matter proceeded on its merits.

Issue(s) to be Decided

- (1) Is the Landlord entitled to a monetary order for loss of rent from December 1 to December 15, 2008?
- (2) Is the Landlord entitled to a monetary order for damages to the rental unit?
- (3) Is the Landlord entitled to recover the cost of the filing fee for this application from the Tenant?

Background and Evidence

Landlord's evidence

The Landlord testified that he mailed the Tenant SM a copy of the Application for Dispute Resolution and hearing package on December 16, 2008 by registered mail. The Landlord testified that the Tenant SM picked up the documents at the post office. The Landlord testified that he mailed the Tenant MD a copy of the Application for Dispute Resolution and hearing package on December 16, 2008 by registered mail.

The Landlord testified that the Tenant MD did not pick up his registered mail package. The Landlord provided tracking numbers for the registered mail packages. The tracking search for the Tenant MD indicates that there was an attempted delivery made on December 17, 2008. The tracking search indicates that the postal employee left a notice card indicating where the item could be picked up. On January 8, 2009, the item was still unclaimed and was therefore returned to the Landlords.

The Tenancy Agreement was a fixed term lease, starting September 1, 2008 and ending August 31, 2009. The Landlord testified that the monthly rent was \$1,010.00, due on the first day of the month. The Landlord testified that the Tenants paid a security deposit totaling \$505.00 as follows: \$200.00 paid on August 23, 2008 and \$305.00 paid on September 1, 2008.

The Landlord testified that the Tenant MD gave notice on November 4, 2008 that they were vacating the rental unit on December 1, 2008. The Landlord testified that the Tenant MD declined to sign the move-out inspection report and that there were damages to the rental unit, being a broken bedroom window and a hole in a wall. The Landlord submitted a copy of the front and back of a cheque for September 1, 2008 rent, which had been returned to him "not sufficient funds". The Landlord testified that they were able to re-rent the property on December 15, 2008.

The Landlord applied for: damages for loss of rent from December 1 to 15, 2008 in the amount of \$505.00; \$97.40 for the cost of advertising the rental unit; \$150.50 to replace the broken bedroom window; a \$25.00 fee for late rent for the month of September; and to apply the security deposit towards that amount owing. The Landlords also applied for recovery of the \$50.00 filing fee.

Analysis

Section 90 of the Act stipulates that a document is deemed to be received, if given or served by mail, on the 5th day after it is mailed. I find that the Tenants are deemed to

have been served with the Notice of Hearing and Application for Dispute Resolution on December 21, 2008.

The Landlord provided a copy of the Tenancy Agreement, which provides for a \$25.00 fee for late payment of rent or bank fees, and I allow that portion of the Landlord's claim.

I accept that the Tenant MD was present at the move-out inspection and declined to sign the report. I accept the Landlord's evidence that the window was broken and had to be replaced. The Landlord provided a copy of the invoice for replacing the window in the amount of \$150.50. The Landlord did not apply for the cost of repairing the hole in the wall. I allow the Landlord's claim for replacing the bedroom window.

I decline the Landlord's application for reimbursement for his expenses of advertising the rental unit, as he would have incurred that expense at some point in any event.

The Landlord has established his monetary claim for loss of rent from December 1 to 15, 2008, in the amount of \$505.00.

The Landlord has been successful in his application and is entitled to recover the \$50.00 filing fee from the Tenant.

Pursuant to Section 72 of the Act, the Landlord may apply the security deposit of \$505.00, together with accrued interest of \$2.59, towards the amount owing to the Landlord.

I hereby grant a monetary order to the Landlord in the amount of \$222.91, calculated as follows:

Loss of rent	\$505.00
Replacement of window	\$150.50
Late fee	\$25.00
Filing fee	\$50.00
Less security deposit and interest	<u><\$507.59></u>
Balance owing to the Landlords	\$222.91

Conclusion

I grant the Landlords a monetary order under section 67 of the Act for \$222.91. This order must be served on the Tenants and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

February 26, 2009
