



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for a monetary Order money owed or compensation for damage or loss; to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant has made application for the return of her security deposit, and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

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 service address noted on the Application, on March 17, 2009. A Canada Post receipt was submitted in evidence that corroborates that statement. These documents are deemed to have been served in accordance with section 89 of the *Act*, however the Tenant did not appear at the hearing.

As the Tenant did not diligently pursue her application by attending this hearing, I hereby dismiss her Application for Dispute Resolution, without leave to reapply.



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Issue(s) to be Decided

The issues to be decided in relation to the Landlord's Application for Dispute Resolution are whether the Landlord is entitled to compensation for lost revenue because this fixed term tenancy was ended early, compensation for fines that were levied by the strata corporation during this tenancy, and compensation for cleaning the rental unit at the end of the tenancy.

Background and Evidence

The Landlord submitted a tenancy agreement that shows this was a fixed term tenancy that began on May 01, 2008 and was scheduled to end on April 30, 2009 and that the Tenant was required to pay monthly rent of \$1,050.00. The Agent for the Landlord stated that this tenancy ended on February 28, 2009, after the Tenant gave one month's notice of her intent to vacate.

The Agent for the Landlord stated that the Tenant paid a security deposit of \$525.00 on June 01, 2008.

The Landlord is claiming compensation, in the amount of \$1,050.00 for loss of revenue from the month of March of 2009, which resulted from the early end of this fixed term tenancy. The Agent for the Landlord stated that the Landlord was unable to find new tenants and has since made the decision to sell the premises.

The Landlord is seeking compensation, in the amount of \$44.00, for cleaning the yard of the rental unit. The Agent for the Landlord stated that the Landlord spent four hours cleaning the yard and he is seeking compensation, at a rate of \$11.00 per hour. The Landlord submitted a Condition Inspection Report, that was signed by the Tenant on March 02, 2009, that indicates the yard needs cleaning.

The Landlord is seeking compensation, in the amount of \$44.00, for cleaning the stove and other "general cleaning". The Agent for the Landlord stated that the Landlord spent four hours cleaning the stove and other areas in the rental unit and he is seeking compensation, at a rate of \$11.00 per hour. The Landlord submitted a Condition Inspection Report, that was signed by the Tenant on March 02, 2009, that indicates some minor cleaning is required, although the report indicates that the stove is clean.

The Landlord is seeking compensation, in the amount of \$100.00, for repairing a door lock and to replace plug plates. The Landlord submitted a Condition Inspection Report, that was signed by the Tenant on March 02, 2009. The Condition Inspection Report does not indicate that there was any damage to plug plates or a door lock. The Agent

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for the Landlord stated that she understands there was a loose door lock and some electrical cover plates were damaged.

The Landlord is seeking compensation, in the amount of \$1,000.00, for fines that were levied during this tenancy. The Landlord submitted documentation that shows three fines of \$100.00 each were levied for infractions that occurred in May of 2008; one fine of \$100.00 was levied for an infraction that occurred in June of 2008; three fines of \$100.00 each were levied for infractions that occurred in October of 2008; and one fine of \$200.00 that was levied for an infraction that occurred in October of 2008. This is a total of only \$900.00.

The Agent for the Landlord stated that the Tenant was notified of all of the infractions on, or about, November 28, 2009. She stated that she has no knowledge of the Tenant being advised of a noise complaint prior to November 28, 2009.

Analysis

I find that the Tenant failed to comply with section 44(1)(b) of the *Act* when she ended this fixed term tenancy on a date that is earlier than the scheduled end date, which caused the Landlord to suffer a loss of revenue for March of 2009. I therefore find that the Landlord is therefore entitled to compensation for loss of revenue for March of 2009, in the amount of \$1,050.00.

I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to clean the yard of the rental unit at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*. In reaching the conclusion that the yard needed cleaning, I relied heavily on the Condition Inspection Report, that was signed by the Tenant after the tenancy had ended, in which she acknowledged that the yard needed cleaning. In the absence of evidence to the contrary, I accept the evidence provided by the Agent for the Landlord, who stated that it took four hours to clean the yard. I therefore award the Landlord compensation, in the amount of \$44.00, for compensation for cleaning the yard. This is based on an hourly rate of \$11.00, which I find to be reasonable for this type of labour.

I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to leave the rental unit reasonably clean at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*. In reaching the conclusion that the rental unit was not left reasonably clean, I relied heavily on the Condition Inspection Report, that was signed by the Tenant after the tenancy had ended, in which she acknowledged that baseboards needed cleaning, that the walls in the second bedroom needed cleaning,

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that the mini-blinds needed cleaning. In the absence of evidence to the contrary, I accept the evidence provided by the Agent for the Landlord, who stated that it took four hours to clean the rental unit. I therefore award the Landlord compensation, in the amount of \$44.00, for compensation for cleaning the rental unit, which appears reasonable for the amount of cleaning that was noted on the Condition Inspection Report. This is based on an hourly rate of \$11.00, which I find to be reasonable for this type of labour.

I find that there was insufficient evidence to establish that a door lock or plug plates were damaged during this tenancy and I, therefore, dismiss the Landlord's application for compensation for repairing these items. In reaching this conclusion, I was strongly influenced by the Condition Inspection Report which does not indicate these items were damaged. Section 21 of the Residential Tenancy Regulation stipulates that a Condition Inspection Report is evidence of the state of repair and condition of the rental unit on the date of inspection, unless the Landlord or the Tenant has a preponderance of evidence to the contrary. I find that the Landlord has not submitted a preponderance of evidence to establish that these items were damaged at the end of the tenancy.

The evidence clearly shows that the Landlord has been fined by the strata corporation for several noise bylaw infractions. The issue before me is to determine whether the Tenant is liable to pay those fines.

Section 7(1) of the *Act* stipulates that a tenant must compensate a landlord if the landlord experiences a loss because the tenant has not complied with the Act, the regulation, or their tenancy agreement. In certain situations, tenants can be held liable for fines levied by strata corporations for unreasonable and ongoing noise.

Section 7(2) of the *Act* stipulates that a landlord who claims compensation for loss that results from a tenant's non-compliance with the Act, regulation, or tenancy agreement must do whatever is reasonable to minimize the loss. The evidence shows that the Tenant was never advised that she was disturbing others or that the disturbances could result in being fined by the strata corporation. I find that the Landlord had a duty to mitigate his potential losses by advising the Tenant she was disturbing others and by advising her that her behaviour could result in a fine. I find that the Landlord did not mitigate his losses by communicating with the Tenant and I therefore dismiss the Landlord's application for compensation for the fines that have been imposed on him by the strata corporation.

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.



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Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,188.00, which is comprised on \$1,100.00 for loss of revenue from March of 2009; \$88.00 in cleaning costs, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I hereby authorize the Landlord to retain the security deposit plus interest, in the amount of \$529.60, in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$658.40. 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.

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: June 15, 2009.

Dispute Resolution Officer