



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

MND, MNR, MNDC, MNSD, & FF

Introduction

This hearing dealt with an application by the landlord seeking a monetary claim related to loss of rent, damage to the rental unit, a request to retain the tenant's security deposit plus interest in partial satisfaction of this claim and to recover the filing fee paid for this application.

Both parties were present at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions during the hearing.

Issues(s) to be Decided

Has the landlord established a monetary claim due to loss of rent owed by the tenants?

Has the landlord established a monetary claim due to damage to the rental unit caused by the tenants?

Background and Evidence

There has been a longstanding dispute between the parties since this tenancy began on April 1, 2007 and ended on April 22, 2007. Originally the tenant attempted to seek a claim for damages through the Province of British Columbia Small Claims Court and the landlord allegedly counter claimed for damages to the rental unit. Both applications were dismissed by the Court as the disputes were to be determined under the *Residential Tenancy Act* through the dispute resolution process.

The tenant filed an application for dispute resolution and a hearing was held on June 12, 2008. A decision on file 716846 was made on June 12, 2008 in which the tenant's claim for damages or loss due to a breach of the tenancy agreement or *Act* by the landlord were dismissed and the tenant's request for the return of double her security deposit plus interest was granted. The landlord did not appear for this hearing.

The landlord filed an application seeking a review of the decision of June 12, 2008. On October 29, 2008 a Dispute Resolution Officer granted the landlord's request for a

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review and a new hearing was scheduled and heard on November 27, 2008. The only issue on review was the tenant's claim for the return of double her security deposit plus interest. In this decision, dated December 23, 2008, the Dispute Resolution Officer documented the landlord's submissions and position as follows:

"The landlord testifies that it did not return the deposit to the tenants as they moved out of the unit without notice, that the landlord lost rent for the month of May, and that the tenants left damage to the rental unit."

In this decision the Dispute Resolution Officer confirmed the original decision of June 12, 2008 awarding the tenant double her security deposit plus interest for the sum of \$786.60.

The landlord is seeking compensation for the sum of \$5,869.30 comprised of one month's lost rent of \$730.00 due to the tenants' failure to provide proper notice under the Act and \$5,060.00 in alleged damages to the rental unit. I note that the sum claimed by the landlord does not correlate to the amounts provided in the documentary evidence.

The landlord presented a printed receipt as evidence of the damages repaired for the sum of \$5,060.00 and presented a witness who completed the work described on the receipt.

The tenants deny the landlord's claim for damage to the rental unit and presented photographic evidence of the condition of the rental unit.

Analysis

I grant the landlord's application in part.

I find that the landlord has no right to request to retain the tenant's security deposit as this was previously determined in the previous decision and the tenant has been awarded the return of double the security deposit plus interest.

I find that the landlord has failed to establish a monetary claim due to damage to the rental unit. The landlord has the burden of proving this claim and in the absence of corroborating evidence in support the claim I find that this burden of proof has not been met.

I find that this determination is supported by the landlord's lack of evidence in support of this application. The landlord provided no photographic evidence, no original receipts, conducted all the alleged work prior to completing the alleged move out condition

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inspection and presented a questionable receipt for the alleged work completed. This receipt provides no corroboration that it was actually created or paid back on April 29, 2007. In addition, the landlord's witness testimony failed to provide any verification that more than \$5,000.00 in damage was done to the rental unit. Based on the landlord's witness evidence I was only persuaded that any repairs required were for minor wear and tear expected from normal use of the premises, in the absence of any corroborating evidence that there was more extensive damage.

I place greater weight on the photographs presented by the tenants which show that the rental unit was undamaged and clean. I accept that little or damage cleaning or damage would occur during a tenancy of under 30 days. The landlord has failed to provide any evidence to support his allegation that the tenants' purposely caused damage to the rental unit.

This portion of the landlord's claim is dismissed without leave to re-apply.

I grant the landlord's application for compensation due to the loss of one month's rent, or \$730.00, due to the tenants' failure to provide proper notice to vacate. In the decision of June 12, 2008 the Dispute Resolution Officer made the following finding:

"...in order for the tenant to be entitled to end the tenancy for breach of a material term, such as loss of quiet enjoyment, the tenant must give notice in writing to the landlord and give it the opportunity to solve the problem. In this case the tenants did not do that, and therefore I find they cannot claim a breach of a material term entitling them to vacate the unit."

As a result of this determination, I find that the landlord is entitled to compensation for one month's lost rent due to the tenants' failure to give proper notice to vacate the rental unit.

I deny the landlord's request to recover the filing fee paid for this application from the tenants as the landlord has failed to substantiate the majority of this monetary claim. I grant the landlord a monetary Order for the sum of **\$730.00**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

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*. I have determined that the landlord has established a monetary claim for the sum of \$730.00



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due to the tenants' failure to provide proper notice to end the tenancy as required by the Act.

Dated: August 6, 2009.

Dispute Resolution Officer