



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MND, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for compensation for unpaid rent, 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 landlord provided affirmed testimony that on December 9, 2009 copies of the Application for Dispute Resolution, evidence and Notice of Hearing were sent to the tenant by registered mail. A Canada Post tracking number was provided as evidence of service. On December 7, 2009 the landlord had received the tenant's written forwarding address that had been left in the landlord's mail slot. This address had been requested by the landlord on December 4, 2009.

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.

Preliminary Matter

The Application was amended to reflect the inclusion of the landlord's claim for unpaid rent; as indicated on the submission referenced in the details of the dispute.

Issue(s) to be Decided

Is the landlord to compensation for damage to the rental unit?

Is the landlord entitled to compensation for unpaid rent?

May the landlord retain the deposit paid in partial satisfaction of the claim for compensation?

Is the landlord entitled to compensation for damages or loss?

Is the landlord entitled to filing fee costs?

Background and Evidence

This one year fixed term tenancy commenced on August 2, 2009. Rent was \$2,350.00 per month, due on the first day of the month. A deposit in the sum of \$1,175.00 was paid on July 4, 2009 and a pet deposit in the sum of \$1,175.00 was paid on August 1, 2009. A copy of the tenancy agreement and an August 1, 2009 move in condition inspection report was submitted as evidence.

On November 11, 2009 the tenant gave the landlord written Notice that she would move out on November 30, 2009. On November 11, 2009 the landlord gave the tenant a 10 Day Notice to End Tenancy for Unpaid Rent; the tenant paid within 5 days.

On December 1, 2009 the landlord contacted the tenant to arrange a move-out inspection. The tenant left the landlord a message stating she would be available on December 2, 2009. The landlord attended at the scheduled time on December 2, the tenant did not arrive and then arrangements were made to meet later in the day. When the parties met the landlord presented the tenant with a list of costs; the tenant then refused to continue with the inspection and would not provide the landlord with her forwarding address. The landlord gave the tenant until December 4, 2009 to respond to his concerns. On December 4, 2009 the tenant told the landlord she would dispute his claims.

The landlord is claiming the following:

Wall repairs	500.00
Replace sink stopper	50.00
Repair living room fixture	50.00
Replace warped vanity drawer	20.00
Dispose of garbage left by tenant	100.00
Advertising costs	100.00
Loss of December rent revenue	2,350.00
Loss of rent revenue January to July 2010, inclusive \$175.00/month	1,225.00
	4,912.17

The landlord supplied photographic evidence showing the missing sink stopper, scratches to the walls, dents in the freezer drawer and food items left in the refrigerator at the end of the tenancy.

The landlord submitted that the wall scratches were caused by the tenant's dog. The tenant left holes in the walls that required repair. The landlord submitted an estimate from a restoration company who quoted \$880.00 for wall patching, wall washing preparation, and supplies. The landlord completed the work himself and has claimed what he finds to be a reasonable sum. The landlord had completed this work prior to the tenant moving in and expected he would not have to again fill holes and touch up paint until at least the end of the fixed term. The scratches caused by the dog were beyond normal wear and tear.

The photographs show dents to the freezer door, which is part of an upright refrigerator unit. The landlord does not know how the dents were caused to this 1.5 year old unit. The landlord had pointed this out to the tenant during their short move out inspection. The tenant had become upset and then left. The landlord supplied appliance shop estimate for door replacement costs.

The photographs show that part of the metal sink stopper mechanism is missing. The landlord does not know where the stopper went and it was replaced. A signed receipt dated December 7, 2009 was submitted as evidence.

The tenant had replaced the landlord's living room fixture with one of her own. When the tenant moved out she took her fixture and did not replace it with the original fixture. The wiring had also been altered, which required repair by an electrician. The landlord submitted a receipt for payment in the sum of \$50.00 for electrical repair.

A vanity drawer in the bathroom contained a plastic tray which was warped. The landlord thinks it may have been placed in a dishwasher and warped by the heat. A new drawer was purchased, but a receipt was not provided as evidence.

The landlord has claimed costs for removal of some chairs, an old computer, food and a computer desk left in the unit by the tenant. The landlord took these items to a transfer station and the cost is estimated at \$15.00 to \$20.00 plus vehicle costs.

The landlord immediately began advertising the rental unit in the Vancouver Sun, at the university, put a sign outside of the house and used a popular web site. The landlord quickly became concerned that he was not getting enough response and lowered the rent to \$2,175.00. The landlord checked other rental rates for similar properties and noticed numerous rentals in the same or higher price range. The landlord was also concerned that it would be difficult to locate tenants for a January 1 move-in. During the first week of December the advertisements reflected a lower rent in the sum of \$2,175.00 and new tenants were found for January 1, 2010. A receipt in the sum of \$20.48 from a web site was provided as evidence of costs.

The landlord is claiming the loss of rental income in the sum of \$175.00 per month from January to July, 2010, inclusive. This loss occurred as a result of the landlord's attempt to mitigate further losses if new tenants were not quickly located.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss. Residential Tenancy Branch policy suggests that a dispute resolution officer may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to some of the compensation claimed by the landlord.

Residential Tenancy Branch policy suggests that, unless the landlord has provided explicit permission, that at the end of a tenancy a tenant must restore any décor to its original condition. Section 37(2) of the *Act* requires a tenant to leave a rental unit in a reasonably clean and undamaged condition.

Residential Tenancy Branch policy suggests that a tenant may place a reasonable number of nail holes in the walls to hang pictures. I find that the landlord was faced with restoring the walls after only 4 months of this 12 month tenancy had elapsed and that due to a breach of section 45(2) of the *Act* by the tenant, the landlord incurred unexpected costs. The photographs demonstrate wall damage beyond normal wear and tear and I find that the landlord is entitled to the amount claimed for the work he completed to repair the walls and repaint.

I find that the landlord is entitled to costs for replacement of the metal sink stopper unit. I base this decision upon the photographic evidence and the receipts submitted, verifying the cost.

Based upon the testimony of the landlord and the receipt for electrical costs, I find that the landlord is entitled to the electrical repairs costs claimed.

The landlord has not provided any verification of the expenditure for the vanity drawer replacement. However, I find, based on the testimony and in the absence of the tenant, that the landlord is entitled to nominal compensation in the sum of \$10.00.

I have accepted that the landlord made efforts to advertise the unit and find that the landlord incurred costs supported by the receipt submitted as verification. Therefore, I find that the landlord is entitled to the amount supported by a receipt in the sum of \$20.48.

The landlord's evidence supports the claim that the tenant left food in the cupboards and refrigerator. I find, in the absence of the tenants, that the landlord had to remove

the food and other items left in the rental unit and that he is entitled to nominal compensation in the sum of \$20.00.

Section 45(2) of the Act prohibits a tenant from giving Notice to end a fixed term tenancy any earlier than the end date of the fixed term. As the tenant has breached this section of the Act by moving out prior to the fixed term agreement end date, I find that the landlord is entitled to compensation for loss of rent revenue for December 2009. The landlord mitigated his loss by immediately seeking new tenants. There is no evidence before me that the tenant made any effort to assist in mitigation of a potential loss.

In relation to the loss of revenue between January and July 2010; I find that the landlord mitigated his loss, as required by section 7 of the Act. The landlord adjusted the rent in order to attract new tenants as quickly as possible. I find that the tenant's actions, by her failure to meet the conditions of the tenancy agreement, resulted in a loss of rent revenue in the difference between the fixed term agreement rent and the rent obtained on January 1, 2010. Therefore, pursuant to section 67 of the Act, I find that the landlord is entitled to compensation for loss of revenue from January to July 2010.

	Claimed	Accepted
Replace dented freezer door	517.17	517.17
Replace sink stopper	50.00	50.00
Repair living room fixture	50.00	50.00
Replace warped vanity drawer	20.00	10.00
Dispose of garbage left by tenant	100.00	20.00
Advertising costs	100.00	20.48
Loss of December rent revenue	2,350.00	2,350.00
Loss of rent revenue January to July 2010, inclusive \$175.00/month	1,225.00	1,225.00
	4,912.17	4,742.65

In the absence of evidence to the contrary, I find that the landlord is entitled to compensation as indicated in the table.

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 find that the landlord is entitled to retain the tenant's security deposits in the amount of \$2,350.00, in partial satisfaction of the monetary claim.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$4,792.65, which is comprised of \$4,742.65 in compensation for damage, loss 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 in the amount of \$2,350.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$2,442.65**. 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: April 28, 2010.

Dispute Resolution Officer