



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This was an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the monetary claim. The hearing was conducted by conference call. The landlord and the named tenant participated in the hearing.. The landlord testified that she served the tenant K.B. by handing the application for dispute resolution and Notice of Hearing to K.B.'s father who assured her that he would give the documents to his son. The respondent S.G. testified that that he has spoken to K.B. who acknowledged to him that he received the application for dispute resolution and Notice of Hearing. Based on the evidence of the applicant and the respondent S.G., I find, pursuant to section 71(2)(b) of the *Residential Tenancy Act* that the respondent K.B. has been sufficiently served for the purposes of the *Act* as of September 1, 2010.

Issues(s) to be Decided

Is the landlord entitled to a monetary order and if so in what amount?

Background and Evidence

The rental unit is a residential house on the sunshine coast. The tenancy began in May, 2008. Monthly rent was \$1,200.00 and the tenant paid a security deposit of \$600.00 at the commencement of the tenancy.

The landlord testified that the tenants moved out in mid September, 2008 without giving notice and without paying rent for September. She said that she learned of this when her neighbour telephoned her to and told her that her tenants were moving out.

The landlord produced photographs of the rental unit taken after the tenants left. The photographs show that the rental unit was left in disarray. It was very dirty and it appeared that some of the damage amounted to vandalism, such as a dead fish left in a bathtub filled with murky water. The appliances were filthy there was food left in the oven and in the refrigerator and all the bathroom fixtures were dirty; the toilet was filled with feces.

The landlord claimed unpaid rent for September, 2008. She claimed rent for October because no notice was given and rent for November because the house could not be re-rented for November due to the damage. The landlord claimed for 17.75 hours of cleaning at \$20.00 per hour. She claimed specific monetary amounts for certain items of damage. The landlord claimed \$35.00 for a broken glass in a French door, \$100.00 for broken or missing fireplace rocks, \$100.00 for damaged slate and \$100.00 for burned, damaged cork floor, \$40.00 for a rug taken, \$25.00 for a broken hose hanger, \$150.00 to remove junk and transport to the dump and \$100.00 for destroyed rugs.

The landlord did not submit any invoices for repair or replacement of damaged goods.

The tenant denied causing any of the damage. He said that the landlord evicted the tenants. He said that in August, 2008 the landlord gave him a handwritten notice telling him to move. The Notice was dated in June but not delivered until August. The tenant said that he moved out in the first week of September. He said that his co-tenant also moved out in the first week of September. He suggested that the damage to the rental property must have been caused by vandals after he and his co-tenant moved out. The tenant did not provide any documents to support his position.

Analysis and Conclusion

I do not accept the tenant's submission that he was evicted by the landlord and is therefore not responsible rent due for September. Neither do I accept his evidence that the property was damaged by vandals for which he is not responsible. I accept the landlord's testimony that the tenants left suddenly without giving any notice and she learned that they had moved when a neighbour living adjacent to the rental unit telephoned her and told her that the tenants were in the process of moving out. The tenants did not provide any documents to show that they provided any kind of notice to the landlord, returned the keys to her or took any steps to return possession of the rental property to her. Much of the mess and damage in the rental property is not consistent with the tenant's explanation; there was cast-off furniture left behind by the tenants, old food left in the refrigerator and food in the oven, none of which is consistent with the tenant's explanation of third party vandals causing the mess and damage.

The landlord is expected to take reasonable steps to mitigate her damage; her age is not an excuse for not acting to mitigate in a timely way. The landlord's evidence is that it took almost 18 hours to clean the rental unit I accept that evidence. I allow the claim for cleaning in the amount of \$355.00. I allow the claim for unpaid rent for September and October, 2008, but not for November; the landlord should have been able to perform all of the necessary cleaning and repairs in one month. With respect to the landlord's claim for damages totalling \$650.00, the landlord did not submit any evidence to show that any money was expended to perform the repairs. She said that the amounts were her own estimates of the repair costs. The tenant denied causing damage and suggested that the damage pre-dated the tenancy. The landlord said that her new tenants agreed to perform some of the required repairs. I find that the landlord has not provided sufficient evidence to prove, on a balance of probabilities that the amounts claimed are correct, or that the tenants are responsible for the amounts claimed. I deny this aspect of the landlord's claim, save and except for the claim for junk removal in the amount of \$150.00. there is ample photographic evidence to show that the tenants abandoned goods and old furniture and other items at the rental property; I allow the claim for junk removal in the amount of \$150.00 as claimed.

I have allowed the claim for rent for September and October in the amount of \$2,400.00 for junk removal in the amount of \$150.00 and for cleaning in the amount of \$355.00. The landlord is entitled to recover \$50.00 of her \$100.00 filing fee for a total award of \$2,955.00. I order that the landlord retain the deposit and interest of \$606.02 and I grant the landlord a monetary order under section 67 in the amount of \$2,348.98. This order may be registered in the Small Claims Court and Enforced as an order of that court.