



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes: MNR; MND; MNDC, MNSD; FF

Introduction

This is the Landlord's application for a Monetary Order for unpaid hydro, damages to the rental unit and loss of rent; to retain the security deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenant.

The Landlord and his witness gave affirmed testimony at the Hearing.

The Landlord testified that the Notice of Hearing documents were mailed to the Tenant, via registered mail, to the forwarding address provided by the Tenant, on October 27, 2010. The Landlord provided a copy of the registered mail receipt and tracking number in evidence, along with a printout of the Canada Post Tracking information. The tracking information indicates that the Tenant received the documents on November 5, 2010.

The Landlord testified that he mailed the evidence package to the Tenant at the forwarding address she provided, on December 17, 2010.

Based on the affirmed testimony of the Landlord and the documentary evidence provided by the Landlord, I am satisfied that the Tenant was duly served with the Notice of Hearing documents by registered mail. Despite being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Hearing proceeded in her absence.

Preliminary Matter

The Landlord has applied against the security deposit, but during the Hearing he advised that the security deposit was awarded back to the Tenant in a previous Hearing. Therefore, the Landlord's application with respect to the security deposit is dismissed.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid hydro, damages and loss of rent?

Background and Evidence

The Landlord gave the following testimony and evidence:

The tenancy started on December 1, 2008. Monthly rent was \$1,050.00, due on the first day of each month. Rent did not include utilities.

The Landlord issued a Notice to End Tenancy for Cause on September 17, 2009, and a Notice to End Tenancy for Unpaid Rent on October 4, 2009. The parties came to a mutual agreement to end the tenancy effective October 31, 2009. Copies of the Notices to End Tenancy and the Mutual Agreement to End a Tenancy were provided in evidence.

The Tenant did not pay any rent for the month of October, 2009. The Tenant did not move out of the rental unit until November 2, 2009, and therefore the Landlord's new tenant could not move into the rental unit on November 1, 2009. The Landlord seeks a monetary award for unpaid rent for October and loss of rent for November, 2009. The Landlord provided a letter from the new tenant in evidence, stating that he arrived at the rental unit on November 1, 2009, but the Tenant was still in the process of moving out. The tenant states that he moved into the rental unit on November 3, 2009.

The Tenant did not clean the rental unit and left garbage and discarded junk at the rental unit. The Landlord and his agent spent 8 hours cleaning and hauling garbage. The Landlord seeks a monetary award in the amount of \$160.00 in compensation for this work (8 hours @20.00 per hour).

The Tenant was responsible for paying utilities and the utilities were in the Landlord's name. The Tenant did not pay the Hydro bill and the Landlord received a Final Notice of Disconnection on August 31, 2009. The Landlord terminated his account with Hydro for the rental unit and the Tenant moved the utilities into her name on September 11, 2009. The Landlord provided a copy of the disconnection notice in evidence, which shows the balance owed by the Tenant is \$381.58. The Landlord paid the Tenant's utilities and seeks a monetary award against the Tenant in the amount of \$381.58 for unpaid hydro.

During the term of the tenancy, the Tenant broke the glass door to the stove. She took it in to be replaced, but did not pick it up. The Landlord seeks a monetary award in the amount of \$48.38 for the cost of replacing the glass. The Landlord provided a copy of the invoice in evidence.

The Tenant damaged the blinds, which had to be repaired and cleaned. The Landlord seeks \$78.75 for this cost. The Landlord provided a copy of the invoice in evidence.

The Tenant removed some custom made wooden bi-fold doors and placed them outside in the elements. The bottoms of the doors absorbed water and were weather damaged. The doors were 6 years old. The Landlord could not find replacement doors because they were custom made, so he has temporarily put up curtains. The Landlord estimates the value of the bi-fold doors to be \$168.00, based on their age, and seeks a monetary award in this amount.

The Landlord's witness gave the following testimony:

The witness is an employee of the Landlord. On November 1, 2009, the witness was at the rental unit and saw that the Tenant was not ready to move out. The rental unit was dirty. The kitchen and bathroom were dirty, the walls were dirty, the rental unit needed to be vacuumed and the place was generally "turned upside down". The witness helped the Tenant move out on November 1, and 2, 2009 and helped with the cleaning.

There were wooden bi-fold doors outside and they were damaged and not fixable.

The new tenant moved in on November 3, 2009. The witness met him at the rental unit to open the doors and give him the keys.

Analysis

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard.

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In the circumstances before me the Landlord has the burden of proving his claim.

Based on the undisputed affirmed testimony of the Landlord and his witness, and on the documentary evidence provided, I make the following findings:

The Landlord has established his claim for unpaid rent in the amount of \$1,050.00 for the month of October, 2009.

The Tenant did not move out, as agreed, on October 31, 2009. The Landlord's new tenant could not move into the rental unit until November 3, 2009, as a result of the Tenant's overholding. The Landlord is entitled to loss of rent for November 1 and 2, 2009, in the amount of \$70.00 ($\$1,050.00/30 \text{ days} = \$35.00 \text{ per day} \times 2 \text{ days}$).

The Landlord's witness attested to the state of uncleanliness of the rental unit at the end of the tenancy. Section 32(2) of the Act requires a tenant to maintain a reasonable standard of cleanliness throughout the rental unit. Section 37(2) of the Act requires a tenant to leave the rental unit reasonably clean at the end of a tenancy and undamaged except for reasonable wear and tear. I find the amount of \$20.00 per hour for cleaning and hauling to be reasonable and, based on the Landlord's and witness's description of the amount of cleaning required, I allow this portion of the Landlord's claim in the amount of \$160.00.

Based on the undisputed affirmed testimony of the Landlord and the documentary evidence provided, the Landlord has established his claim for unpaid hydro in the amount of \$381.58.

The Landlord did not arrange for a condition inspection with the Tenant at the beginning or the end of the tenancy. Sections 23 and 35 of the Act state that inspections must be done at the beginning and at the end of the tenancy, and it is the responsibility of the Landlord to arrange for the inspections to take place. A Condition Inspection Report, done in accordance with the Act and the Regulation, is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless there is a preponderance of evidence to the contrary. Without a move-in Condition Inspection Report, I find that there is insufficient evidence that the Tenant had damaged the bi-fold doors, glass door or blinds and this portion of the Landlord's claim is dismissed.

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

The Landlord has established a monetary award as follows:

Unpaid rent for October, 2009	\$1,050.00
Loss of rent for November 1 and 2, 2009	\$70.00
Compensation for cleaning the rental unit and hauling garbage	\$160.00
Unpaid utilities	\$381.58
Recovery of the filing fee	\$50.00
TOTAL	\$1,711.58



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Conclusion

I hereby grant the Landlord a Monetary Order in the amount of \$1,711.58 against the Tenant. This Order must be served on the Tenant and may be filed in the Provincial Court of British Columbia (Small Claims) 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: January 11, 2011.
