



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNR, MNDC, FF, O

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent or utilities, for compensation for loss or damage under the Act, regulations or the tenancy agreement, to recover the filing fee for this proceeding and for other considerations.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on October 7, 2010. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issues(s) to be Decided

1. Are there rent or utility arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent or utilities and if so how much?
3. Is there damage to the unit and if so how much?
4. Is there loss or damage to the Landlord and if so how much?
5. Is the Landlord entitled to compensation for damage or loss and if so how much?

Background and Evidence

This tenancy started on November 1, 2009 as a fixed term tenancy with an expiry date of April 30, 2010. Rent was \$425.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$212.50 in the first part of May, 2009. The Landlord said the Tenant moved out of the unit on April 30, 2010.

The Landlord said he made the application for compensation for unpaid utilities of \$428.25 for the period that the Tenant rented the unit, for \$255.36 for cleaning and painting due to smoke damage in the unit and \$425.00 for the loss of the May, 2010 rent of the unit.

The Landlord continued to say that he personally delivered a demand for payment of the utilities on October 2, 2010 with invoices from the utility companies. The Landlord said the Tenant has not paid this amount to the Landlord.

As well, the Landlord said this unit was a non smoking unit as indicated in the tenancy agreement addendum point number 2 which is signed by both the Landlord and the Tenant. The Landlord said the Tenant smoked in the unit and as a result the Landlord had to shampoo the carpets and paint the unit to remove the smoke smell. The Landlord submitted a bill for \$255.36 for the repairs, cleaning and painting.

In addition the Landlord said he lost the month of May, 2010 rental of \$425.00 due to the smoke smell in the unit. The Landlord said he had two separate potential tenants that declined the unit due to the smoke smell. The Landlord submitted the potential tenants' emails that said they did not want the unit due to the smoke smell. The Landlord said he did rent the unit out on July 1, 2010 and that he has only claimed for the May, 2010 rent of \$425.00.

Analysis

Section 46 (6) says a landlord can claim unpaid utilities as unpaid rent if they are unpaid for more than 30 days and the landlord gives the tenant a written demand for payment of them. I find for the Landlord as the utilities are unpaid and a demand for payment was made on October 2, 2010. I order the Tenant to pay the Landlord the unpaid utilities in the amount of \$428.25.

Section 37 (2) says that when a tenant vacates a rental unit they must leave the unit reasonably clean and undamaged except for reasonable wear and tear. As the Tenant smoked in a non smoking rental unit, I find that the smoke damage was unreasonable damage and I grant the Landlord the costs to clean and paint the unit in the amount of \$255.36.

As well the Landlord has established that he did try to minimize his loss as required by section 7 (2) of the Act, by renting the unit out as soon as the Tenant vacated the unit, but due to the smoke smell in the unit the Landlord was unable the rent the unit until July, 2010. I find for the Landlord and grant the Landlord's request for the loss of May, 2010 rent in the amount of \$425.00.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Loss of Rental Income:	\$ 425.00	
Unpaid Utilities	\$ 428.25	
Cleaning and painting	\$ 255.36	
Recover filing fee	\$ 50.00	
Subtotal:		\$1,158.61
Balance Owing		\$1,158.61

Conclusion

A Monetary Order in the amount of \$1,158.61 has been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.

Residential Tenancy Branch