



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim; and to recover the filing fee from the tenant for the cost of this application.

The parties both attended the conference call hearing and gave affirmed testimony. The tenant was assisted by another person who did not give testimony, and called a witness. The parties were also given the opportunity to cross examine each other and the witness on their testimony. All information and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit, site or property?
Is the landlord entitled to a monetary order for unpaid rent or utilities?
Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The undisputed testimony of the parties is that this month-to-month tenancy began on May 15, 2010. Rent in the amount of \$750.00 per month was payable in advance on the 1st day of the month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$375.00 as well as a pet damage deposit in the amount of \$375.00.

The landlord testified that the tenant put a stop-payment on the rent cheque for the month of September, 2010 and the landlord's bank charged her \$7.00 for the returned cheque. The landlord claims \$757.00 for the unpaid rent and the bank fee.

The landlord further testified that the tenant was served with a notice to end the tenancy and the tenant moved out on October 1, 2010. The landlord was not able to show the unit to perspective tenants, and therefore, the landlord claims \$750.00 for loss of revenue for the month of October, 2010. During cross examination, however, the landlord admitted that she does not know when the tenant actually vacated the rental unit.

The landlord further testified that on September 14, 2010 the tenant assaulted her, bent the underwire of her bra, broke her camera by knocking it out of her hand, and due to the altercation, the landlord was unable to complete a move-out condition inspection report, although a move-in condition inspection report was completed. After the assault, the landlord sat in the tenant's wicker chair and attempted to take pictures of the tenant. She also stated that the tenant had set off the smoke alarm on several occasions, and her 10 year old daughter is very frightened. The landlord did not attend to cutting the grass until October because she did not want to meet up with the tenant. She has not attempted to re-rent the unit since the tenant vacated, although she testified that a perspective tenant decided to not rent the suite due to the animosity between the landlord and the tenant. The landlord claims \$1,500.00 for emotional distress caused by the tenant.

The landlord also testified that the tenant kept the kitty litter box in her bedroom, and at the end of the tenancy, the room smelled of cat urine and she had to have the carpet cleaned. Further, the tenant had attached a bracket to the bedroom wall for her TV, and the landlord had it removed and was also required to have the holes filled and the wall painted. She provided a receipt for those services, being \$200.00 for the wall repairs and \$100.00 for cleaning the carpet.

The tenant testified that she moved out on September 15, 2010, and the landlord saw her there with the moving truck. She stated the landlord had arrived home for lunch, and a COIT steam cleaning company was parked in her spot. The landlord would not allow the tenant to put the moving truck in the drive-way, so they used the neighbour's driveway.

The witness for the tenant testified that she told the tenant to leave the TV bracket on the wall because it was bolted. She further testified that the kitty litter box was not in the bedroom; the tenant kept it in the living room.

Analysis

The *Residential Tenancy Act* states that a tenant must pay rent when it is due even if the landlord fails to comply with the *Act*, regulation or tenancy agreement. I therefore find that the tenant is in arrears of rent in the amount of \$750.00. I further find that the landlord is entitled to the \$7.00 bank fee after the tenant put a stop-payment on the rent cheque.

With respect to the landlord's application for loss of revenue, the *Act* also states that parties who make claims must do whatever is reasonable to minimize the damage or loss. The landlord testified that she has not attempted to re-rent the unit, and therefore has not mitigated any loss of revenue. Therefore, the landlord's application for \$750.00 for rent for the month of October, 2010 must be dismissed.

With respect to the landlord's claim for emotional distress, I refer to Residential Tenancy Policy Guideline 16 which states that an arbitrator may award nominal damages where there has been no significant loss proven, but I would then have to find that there has been an infraction of a legal right; whereas aggravated damages are measured by the suffering of the person wronged. Punitive damages are meant to punish the wrong-doer and I have no authority to award this type of damages.

In this case, the tenant did not dispute that the assault took place. The landlord did not testify that the tenant, the tenancy, nor the assault had any effect on her emotionally, but that she did not want to re-rent the unit after the altercation, and that her 10 year old daughter is frightened. Further, in the evidence of the landlord, after the alleged assault took place, the landlord sat in the tenant's wicker chair and tried to take pictures of her.

The landlord stated at the beginning of the hearing that the tenant moved out on October 1, 2010 and that she didn't attend to mowing the lawn until October because she didn't want to meet the tenant, however the landlord did not dispute the tenant's evidence that the tenant was in the process of moving with a moving truck when the landlord arrived at home for lunch on September 15, 2010.

I find that the landlord is entitled to one month's rent in the amount of \$750.00 and the landlord is entitled to retain the security deposit. I further find that the tenant did not clean the carpets when she moved out, and that she had a pet that was not in a cage. Therefore, I find that the landlord has established a claim for \$100.00 for carpet cleaning. With respect to the damage, I find that the landlord has established a claim for wall repair and painting in the amount of \$200.00. I find that the landlord has not established a claim for emotional distress. The landlord is entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, I order that the landlord retain the security deposit in the amount of \$750.00 and pursuant to section 67 of the *Residential Tenancy Act* I grant the landlord a monetary order for \$357.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: February 21, 2011.

Residential Tenancy Branch