



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 rent and loss of rent, compensation for damage or loss under the tenancy agreement and the cost of cleaning the rental unit and disposing of the Tenant's abandoned belongings; to retain the security deposit in partial satisfaction of its monetary claim; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Landlord's agent, HH, served the Tenant with the Notice of Hearing documents at her place of employment on October 29, 2010 at 10:40 a.m.. The Landlord provided a Certificate of Service in evidence. I am satisfied that the Landlord served the Tenant with the Notice of Hearing Documents pursuant to the provisions of Section 89(1)(a) of the Act.

The Landlord's agent, PA, testified that he served the Tenant with copies of the Landlord's evidence package at her place of employment on February 9, 2011.

The Tenant did not provide any documentary evidence.

During the Hearing, the Landlord's agents withdrew the Landlord's application for liquidated damages under the tenancy agreement.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order, under the provisions of Section 67 of the Act, and if so, in what amount?

Background and Evidence

A copy of the tenancy agreement was entered in evidence. It was a term lease, due to end on October 31, 2010, at which time it could continue on a month-to-month basis thereafter. Monthly rent was \$834.00. The Tenant also paid \$10.00 a month for parking and \$10.00 a month for a locker. The Tenant moved into the rental unit in November of 2005. The Tenant paid a security deposit of \$350.00 on October 26, 2005.

The Landlord's agents gave the following testimony:

On August 13, 2010, the Tenant phoned the Landlord and complained of bedbugs in the rental unit. The Landlord immediately called a professional pest control company and issued a Notice of Entry, indicating that the rental unit would be treated for bed bugs on August 16, 2010. The rental unit was sprayed on August 16, 2010. A second treatment was provided on August 31, 2010, but the Tenant was not home.

The Landlord made several attempts to communicate with the Tenant after August 16, but the Tenant did not respond to voicemails or notes left by the Landlord. The Tenant did not pay rent on September 1, 2010, so the Landlord issued a Notice to End Tenancy on September 2, 2010, and posted it on her door.

On September 8, 2010, the Tenant phoned the Landlord and advised that she could not live in the rental unit any longer due to the bed bugs. In an effort to save the tenancy, the Landlord offered a smaller suite in the rental property that had just been freshly renovated. On September 12, 2010, the Landlord posted a Notice of Entry on the Tenants door. On September 13, 2010, the Landlord entered the rental unit, expecting it had been abandoned, but the Tenant's furniture and belongings remained there. Therefore, the Landlord considered the rental unit to be occupied.

On September 15, 2010, the Tenant advised that Landlord that she would not be moving into the other suite, and would not be returning to collect the remainder of her belongings.

During the tenancy, the Landlord had provided the Tenant with two sets of keys. The Tenant's mother returned one set sometime during the first week of September. The other set, minus one mail key, was returned by the Tenant on September 26, 2010. On September 30, 2010, the Landlord picked up the mail key at the Tenant's place of employment.

The Landlord advertised the rental unit in the local newspaper and on web sites. On September 18, 2010, the Landlord met with a prospective tenant and drew up a draft tenancy agreement with that tenant, who was to move into the rental unit on October 15, 2010. The prospective tenant phoned the Landlord and advised that he had decided not to rent the rental unit as he had found another one he preferred. The prospective tenant did not sign the draft tenancy agreement. The Landlord was able to re-rent the rental unit to a different tenant for November 1, 2010.

The Landlord seeks a monetary award, calculated as follows:

Unpaid rent for September, 2010	\$833.00
Loss of rent for October, 2010	\$833.00
Cost of cleaning/repairs/garbage removal	<u>\$765.00</u>
TOTAL	\$2,431.00

The Tenant gave the following testimony:

The Tenant moved out of the rental unit because she couldn't stay there with her children due to the bed bugs. The Tenant was not sure they had been eradicated by the treatments in August. The Landlord's agent PA told the Tenant that she had to stay in the unit to "bait the bugs".

The Tenant agreed that she did not pay rent for September, 2010. The Tenant's mother returned the keys to the rental unit to the Landlord's agent, HH, on September 1st or 2nd so the Landlord should have known at the beginning of September that she was not returning to the rental unit. The Landlord knew the Tenant was not taking the other suite by September 15, 2010. The Tenant believes she should not be responsible for the Landlord's loss of rent for the months of September and October, 2010, because of the bedbugs.

Analysis

Rent must be paid on the day that it is due unless:

- There is an existing Order of a Dispute Resolution Officer allowing the Tenant to withhold any or all of the rent;
- The Landlord agrees in writing that the Tenant can withhold rent;
- The Landlord illegally increases the rent; or
- The Landlord does not reimburse the Tenant for emergency repairs after receiving the written account and receipts for the repairs from the Tenant.

None of these conditions apply in this set of circumstances.

The Tenant entered into a tenancy agreement, which is a legal document, agreeing to a fixed term tenancy. The Tenant had no authority under the Act to end the tenancy early.

I am satisfied that the Landlord made efforts to mitigate its loss of revenue by attempting to re-rent the rental unit as soon as it was satisfied that the Tenant was not returning. I find the Landlord is entitled to unpaid rent for the month of September and loss of rent for the month of October, 2010.

The Tenant left personal effects, food and furniture at the rental unit. The Landlord provided photographs of the rental unit after the Tenant moved out, along with copies of an estimate and purchase order for the cost of cleaning the rental unit and removing the Tenant's abandoned belongings. The invoice for cleaning, dated October 14, 2010, is in the amount of \$332.47. The purchase order, for junk removal and cleaning, is dated September 23, 2010, and includes an estimate of \$450.00 for junk removal and \$200.00 for cleaning. The Landlord's agent testified that the garbage had been removed from the rental unit, but did not provide an invoice indicating the actual cost. Based on the photographic evidence, I am satisfied that the Landlord incurred considerable costs for removal of garbage, and allow this portion of its claim in the amount of \$200.00.

Based on the Landlord's evidence, I find the Landlord is entitled to the following:

Unpaid rent for September, 2010	\$833.00
Loss of rent for October, 2010	\$833.00
Garbage removal	\$200.00
Cost of cleaning/repairs	<u>\$332.47</u>
TOTAL MONETARY AWARD	\$2,198.47

Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlord may apply the security deposit of \$350.00, and accrued interest in the amount of \$12.38, towards partial satisfaction of the Landlord's monetary claim. The Landlord has been successful in its application and is entitled to recover the cost of the \$50.00 filing fee from the Tenant.

The Landlord has established a monetary claim as follows:

Monetary award	\$2,198.47
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$2,248.47
Less security deposit and accrued interest	<u>- \$362.38</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$1,886.09

Conclusion

I hereby grant the Landlord a Monetary Order in the amount of \$1886.09 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: February 25, 2011.
