



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This conference call hearing was convened in response to the landlord's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, unpaid rent, and damage to the property; to keep the security deposit; and to recover the filing fee associated with this application.

The landlord participated in the hearing and provided affirmed testimony. She testified that she served the Notice of a Dispute Resolution Hearing to the tenant by way of registered mail sent on February 18th, 2011 at the forwarding address provided by the tenant. The tenant did not participate and the hearing proceeded in his absence.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a single detached home with full basement, approximately 20 years old, situated on a private suburban lot. Pursuant to a written agreement, the fixed term tenancy was based on a one year lease, starting February 1st, 2010 until January 31st, 2011.

The rent of \$2500.00 per month was payable on the first of each month and the tenant paid a security deposit in the amount of \$1250.00. Condition inspection reports were completed at the start and the end of the tenancy.

The landlord's evidence can be summarized as follows: the City of Surrey Electrical and Fire Safety team attended the rental property on January 17th, 2011 and posted a Notice of inspection Requirement to take place on January 19th, 2011 for possible electrical and fire safety concerns. On that same day, the landlord also attended the property to post a 10 Day Notice to End Tenancy for unpaid rent. The landlord found the notice of inspection from the City of Surrey and also discovered that the house was empty. The Surrey Electrical and Fire Safety team conducted their inspection on January 19th, 2011. They identified safety concerns related to a marijuana grow operation, and notified the owner that a registered electrical contractor had to be retained to perform mandatory safety checks. The City of Surrey issued the owner with a "Do Not Occupy" notice until remediation was completed. Upon completion of the statutory inspections, the City of Surrey released a report informing the owner that evidence of controlled substance grow/ clandestine drug lab had been found within the residence, and provided the owner with the following remediation steps:

- Perform environmental testing, cleaning, and coordinate electrical requirements and natural gas deficiencies.
- Obtain certification from an approved contractor that the residence is safe for re-occupancy.
- If electrical power was disconnected, ensure reconnection of power with BC Hydro.

In addition to providing copies of notices and records related to the above noted facts, in her documentary evidence the landlord submitted receipts for the work performed, with 13 colour photographs to confirm that the residence was used as either a grow operation or a drug lab.

The landlord also sent photographs by fax; however this form of delivery made the resolution of the prints illegible on the receiving end. The landlord testified that the tenant ended the tenancy prematurely and that he did not pay rent for January 2011. She was able to contact him by phone once after he moved out and that he said that he had no knowledge of a grow operation. The landlord said that attempts to call the tenant after this conversation failed.

The landlord submitted an application for the following monetary order:

- City of Surrey inspection fee:	\$ 4,234.96
- Liquidated damages:	\$ 1,400.00
- Unpaid rent:	\$ 2,500.00
- Repair front door and lock:	\$ 280.00
- Estimate for the work required:	\$13,500.00
- Security Deposit:	\$ 1,250.00
- Sub-total:	\$23,164.96

The landlord said that the property manager also spoke to the tenant; the tenant claimed that he had to move out because of a mould issue that resulted from a flood, and that he would provide a doctor's note as evidence. The landlord stated that this event was never reported by the tenant.

Analysis

I accept the landlord's undisputed testimony that she served the tenant with the Notice of Dispute Resolution in a proper manner pursuant to section 89 of the *Residential Tenancy Act*. I find that the tenant knew, or ought to have had knowledge of the date scheduled for this hearing.

Concerning the monetary claim, the landlord clarified that the estimate for the work required pertains only to work related to remediation ordered by the City of Surrey before the residence can be deemed suitable for occupancy. Based on the documentary evidence and the landlord's testimony I find that the landlord is entitled to that claim.

Section 45(2) of the *Residential Tenancy Act* states in part that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy. The tenant left sometime in January, did not give the landlord any notice and I find that the landlord is entitled to recover the loss of that month's rent.

The landlord provided invoices for repairs to the door and for the City of Surrey's inspection requirements and I grant the landlord recovery of these costs.

Section 4 of the *Residential Tenancy Policy Guidelines* addresses liquidated damages and states in part that the amount must be a genuine pre-estimate of the loss at the time the contract is entered into. This means that the sum established by the landlord cannot be based on the value of the property or the amount of rent. In this case the landlord specified that the loss is mostly from the cost of re-advertising. Costs above and beyond related administrative losses may constitute a penalty, particularly when the sum is extravagant in comparison to the greatest loss that could follow a breach. In this case I find that \$1,400.00 is extravagant compared to the cost that the landlord would incur to re-rent the property. Therefore I award the landlord an arbitrary amount for administrative losses of \$500.00.

Conclusion

The landlord established a claim of \$21,014.96. I authorize the landlord to retain the tenant's \$1,250.00 security deposit for a balance owing of \$19,764.96.

Since the landlord was successful, I award the landlord recovery of the \$100.00 filing fee and pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$19,864.96.

This Order may be registered in the Small Claims Court 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: June 03, 2011.

Residential Tenancy Branch