



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND; MNDC, MNSD; FF

Introduction

This is the Landlord's application for a Monetary Order for damages to the rental unit and compensation for damage or loss; to retain the security deposit in partial satisfaction of his monetary claim; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

It was established that the Landlord mailed the Notice of Hearing documents to each of the Tenants, by registered mail, to their residence on January 6, 2011. The Landlord provided the tracking numbers and original registered mail receipts. I am satisfied that both Tenants were served with the Notice of Hearing documents in accordance with the provisions of Section 89(1)(c) of the Act.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order pursuant to the provisions of Section 67 of the Act?

Background and Evidence

This tenancy ended on October 17, 2010, as a result of a Notice to End Tenancy for Unpaid Rent. The Landlord applied by way of Direct Request Proceeding pursuant to the provisions of Section 55(4) of the Act. On October 25, 2010, the Landlord was granted an Order of Possession effective 2 days after service of the Order on the Tenants, and a Monetary Order in the amount of \$850.00 for unpaid rent.

The Landlord gave the following testimony:

The Tenants did not move out of the rental unit in compliance with the Order of Possession. On November 9, 2010, the Landlord filed the Order of Possession in Supreme Court and was granted a Writ of Possession. Bailiffs assisted the Tenants in moving out of the rental unit.

The Landlord testified that there was \$2.50 still owing for unpaid rent for November, 2010. In addition, the Landlord is seeking late fees for three months ($\$25.00 \times 3 = \75.00).

The Tenants paid a security deposit in the amount of \$400.00 on June 25, 2009. The Landlord seeks to apply the security deposit in partial satisfaction of his monetary award.

The Landlord testified that the Tenants damaged the rental unit. In addition, the rental unit was very dirty and required considerable cleaning. The Landlord testified that he has not applied to recover all of his labour costs in bringing the rental unit back to rentable condition, and that it took him three months to do so. The Landlord seeks a monetary award, calculated as follows:

DESCRIPTION	CLAIM
Cost to rekey the rental unit	\$18.00
Cost of replacing burned out light bulbs	\$5.00
Cost of removing old furniture and junk	\$90.00
Landlord's labour for cleaning (16 hours @\$15.00 per hour)	\$240.00
Replace missing bathtub soap holder	\$50.00
Cost of repairing lock and door hinges	\$50.00
Cost of repairing holes in walls	\$45.00
Cost of repairing damage to hardwood floors	\$65.00
Unpaid rent and late fees	\$77.50

Cost of Bailiff fees	<u>\$895.00</u>
TOTAL CLAIM	\$1,610.50

The Landlord provided photographs, receipts and other documentary evidence in support of his claim.

The Tenant gave the following testimony:

The Tenant testified that he was late paying rent, but that he paid eventually. He stated that the Landlord came with an eviction notice because the Tenants were \$15.00 short on rent, but that it was eventually paid. The Tenant stated that he decided to look for somewhere else to live and moved at the end of November. The Tenant testified that the Bailiff and the Landlord gave him some time to move his things out.

The Tenant testified that he moved out of the rental unit on November 29, 2010, but that he left some belongings at the rental unit because he was waiting for some friends to help him move. The Tenant stated that the Landlord threw his belongings away.

The Tenant acknowledged that the floor had not been cleaned and that he had broken the mirror in the bathroom. He submitted that the remainder of the damage was done by the Bailiffs when they were moving his possessions out of the rental unit.

Analysis

Section 67 of the Act provides:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The photographs provided by the Landlord show an extremely dirty kitchen and bathroom; dirty floors; dirty walls; multiple holes in walls; deep gouges in hardwood floors; a missing soap receptacle in the bathroom; broken bathroom mirror; and a broken intercom. I do not accept the Tenant's testimony that the Bailiff was responsible for the damages, which were considerable. Based on the testimony and documentary evidence provided, I find that the Landlord has proven his claim for damages, including the cost of cleaning the rental unit.

The Landlord had a Writ of Possession for the rental unit and was entitled to evict the Tenant immediately. The Writ also allows the Landlord to seize and sell any possessions of the Tenants to realize the Landlord's costs and expenses for executing the Writ. I accept the Landlord's testimony that the Tenants did not leave anything of value in the rental unit. I find that the Landlord is entitled to recover the costs of executing the Writ.

The Landlord did not provide sufficient evidence to support his claim for unpaid rent in the amount of \$2.50 and two of the late fees in the amount of \$50.00. The tenancy agreement allows for late fees, and I accept that the Tenants were late in paying October's rent. The Landlord's application for late fees for the month of October, 2010, is granted.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of the Landlord's monetary claim. No interest has accrued on the security deposit.

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

The Landlord has established a monetary claim as follows:

Cost of Bailiff fees and rekeying rental unit	\$913.00
Cost of cleaning, replacing light bulbs and junk removal	\$335.00
Late fee for October rent	\$25.00
Recovery of the filing fee	\$50.00
Subtotal	\$1,608.00
Less security deposit	- \$400.00
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$1,208.00

Conclusion

I hereby provide the Landlord a Monetary Order in the amount of \$1,208.00 for service upon the Tenants. This Order 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: May 26, 2011.

Residential Tenancy Branch