



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, 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 an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of this application.

The landlord attended the conference call hearing, gave affirmed testimony, and provided evidence in advance of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on May 14, 2011, the tenant did not attend. All evidence and the testimony provided have been reviewed and are 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 keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on May 1, 2010 and ended on February 1, 2011. Rent in the amount of \$750.00 per month was payable in advance on the 1st day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$375.00, and no pet damage deposit was collected.

The landlord also testified that the tenant normally paid the rent by taking it to the landlord, or the landlord would collect it when he delivered the tenant's mail, because the tenant's mail went to the landlord's mailbox regularly.

The landlord went to India on November 7, 2010 and returned on December 7, 2010. The tenant failed to pay rent in the month of December, 2010, and upon the landlord's return he asked the tenant several times for the rent. The tenant told the landlord that he had lost his job and was waiting for EI benefits. The tenant further failed to pay rent when it was due in January, 2011, and the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which was provided in advance of the hearing. The notice is dated January 21, 2011 and states that the tenant failed to pay rent in the amount of \$1,500.00 that was due on January 1, 2011 and contains an expected date of vacancy of January 30, 2011.

The landlord further testified that the tenant moved from the rental unit after the notice was issued, on February 1, 2011 and during the move, the tenant hit the eaves trough on the house with the moving truck, which caused damage to the eaves trough, and the landlord provided photographs of the damage. The landlord claims \$1,000.00 for the damage, but provided no evidence with respect to the actual cost. He testified that he has not yet had the repairs completed.

Analysis

Firstly, with respect to the landlord's claim for damages, the onus is on the landlord to prove a 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

I have no evidence before me with respect to the actual or even estimated amount for repair to the eaves trough, and therefore, I find that the landlord has failed to satisfy element 3, and therefore, the landlord's claim for damages cannot succeed.

With respect to the landlord's claim for unpaid rent, I accept the evidence of the landlord, and find that the tenant is in arrears of rent the sum of \$1,500.00. The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application. I further find that the landlord's claim to keep the security deposit in partial satisfaction of the claim is justified.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the security deposit in the amount of \$375.00, and pursuant to Section 67 of the *Residential Tenancy Act*, I grant the landlord a monetary order for the balance due of \$1,175.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

The landlord's application for a monetary order for damages is hereby dismissed without leave to reapply.

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 31, 2011.

Residential Tenancy Branch