



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 hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application requesting a monetary Order for damage to the rental unit, unpaid rent, damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on June 17, 2011, a courier service was used to serve the tenant the Notice of Hearing package and evidence. The courier service records indicated that service delivery was attempted on June 17 and twice on June 20, 2011, to the forwarding address provided by the tenant on June 3, 2011.

The delivery record indicated that the package was then held at the courier depot from June 21 to 28, 2011, for pick-up by the tenant. The tenant did not respond to the notice that the landlord submits would have been left at the address for the tenant, and on June 29, 2011, the package was returned to the landlord. Courier service had been used as Canada Post was on strike at the time.

Section 71(2) of the Act provides:

(2) In addition to the authority under subsection (1), the director may make any of the following orders:

(a) that a document must be served in a manner the director considers necessary, despite sections 88 [how to give or serve documents generally] and 89 [special rules for certain documents];

(b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;

(c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

(Emphasis Added)

Therefore, as the tenant chose not to pick up the courier delivery between June 21 and 28, 2011, I find that the tenant was sufficiently served with Notice of this hearing. A failure to respond to a delivery Notice does not allow a party to avoid service.

These documents are deemed to have been served in accordance with section 71(2) of the Act; however the tenant did not appear at the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for damage to the rental unit, unpaid rent, and damage or loss under the Act in the sum of \$2,994.20?

Is the landlord entitled to retain the deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on April 12, 2010, rent was \$2,100.00 per month due on the first day of each month. A deposit in the sum of \$1,050.00 was paid on April 11, 2010. Parking charges were \$110.00 per month; the tenancy agreement included a \$20.00 late rent payment fee clause.

On May 2, 2011, the landlord issued the tenant a 1 Month Notice Ending Tenancy for Cause; which had an effective vacancy date of June 30, 2011. On June 3, 2011, the tenant called the landlord and asked she attend at the unit to complete a move-out condition inspection report, as the tenant was vacating on that date. No prior notice had been given by the tenant.

The tenant signed the move-out condition inspection report which listed all of the damage to the unit and the need for cleaning and provided the tenant's forwarding address. The tenant also signed an agreement that the following costs could be deducted from her deposit:

Carpet cleaning	95.20
Painting	250.00
Suite cleaning	84.00
Key fob replacement	25.00
TOTAL	514.20

In addition to the items agreed to by the tenant the landlord has claimed the following within 15 days of June 3, 2011:

June 2011 late rent fee	20.00
June parking	110.00
Noise fine	200.00
Previous filing fee cost	50.00
TOTAL	2480.00

The tenant signed the agreement at the end of the tenancy indicating she did not agree with this portion of the landlord's claim.

The landlord supplied receipts for the cleaning costs claimed. The unit required more repair than previously thought, an invoice dated June 10, 2011, indicated costs in the sum of \$509.00 to paint 2 bedrooms, 2 baths and drywall repairs that were required; however, the landlord claimed only \$250.00.

The landlord had a previous hearing during which the claim for the noise fine was dismissed.

The landlord provided copies of the tenancy agreement, condition inspection report, agreement to deductions form and the 1 Month Notice ending tenancy.

Analysis

The portion of the claim for a noise fine has been previously decided; therefore, the claim in relation to that hearing is res judicata and may not be altered by making a 2nd application.

The tenant has agreed to deductions from the deposit in the sum of \$514.20; I find that agreement stands.

I find that the landlord is entitled to the following compensation:

	Claimed	Accepted
Unpaid June, 2011 rent	2100.00	2100.00
June parking	110.00	110.00
Noise fine	200.00	Previously decided
Previous filing fee cost	50.00	Previously decided
TOTAL	2480.00	2230.00

Even though the tenant had been given Notice ending the tenancy; the effective vacancy date of the Notice was not until June 30, 2011. The tenant did not give the landlord proper Notice ending the tenancy any earlier than that date and remained in

the unit until June 3, 2011. Therefore, I find that June 2011 rent, the June late fee and parking fee are due to the landlord.

I find that the landlord is entitled to painting costs claimed in the application; an amended application would have been required in order to increase this portion of the claim.

Therefore, the landlord is entitled to compensation in the sum of \$2,744.20.

The landlord will retain the deposit in the sum of \$1,050.00 in partial satisfaction of the claim.

I find that the landlord's application has merit, and I find that the landlord entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the landlord established a monetary claim, in the amount of \$2,794.20, which is comprised of damage and loss, unpaid rent, fees, damage to the unit and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will retain the deposit in the sum of \$1,050.00.

Based on these determinations I grant the landlord a monetary Order for \$1,744.20. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The balance of the landlord's claim has been previously decided.

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: September 15, 2011.

Residential Tenancy Branch