



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF
 MNSD

Introduction

This hearing dealt with cross applications by the landlord and tenant. The application by the landlord is for a monetary order for damage to the unit, a monetary order for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee. The application by the tenant is for return of the security deposit. Both parties attended the conference call hearing.

Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

Background and Evidence

The landlord under file 771969 obtained an order of possession for the rental unit with an effective date of May 31, 2011. The tenant did not vacate the rental property on May 31, 2011 and the landlord subsequently obtained a writ of possession and the tenant removed from the rental unit by bailiffs.

The landlord testified that the rental unit was left very dirty, there was junk and discarded items left in the rental unit, the carpets were not cleaned, the bathroom door lock was broken, walls damaged and that the tenant removed 2 space heaters that the landlord had supplied.

The landlord stated that some of the repair work had been completed by the landlord in an effort to keep costs down.

The landlord stated that the rental unit was re-rented July 1, 2011

The tenant acknowledged that she had damaged the walls and that the carpet was left very dirty but maintained that the \$175.00 she had offered the landlord should have been sufficient to cover the landlord's costs for cleaning and repairs. The tenant stated

that the bathroom door lock was fine when she vacated the rental unit and that she did not break it.

The tenant stated that she did not agree that the landlord was entitled to rent for June 2011 or that she should have to pay costs for a bailiff as she was vacating the rental unit June 2, 2011 on her own. The tenant claimed that the bailiff came to the rental unit on May 31, told her she could have until June 2 to vacate, but later came back and advised the tenant she was to vacate by June 1, 2011, the tenant vacated June 2, 2011.

The tenant maintained that the bailiff told her to not clean the rental unit although she stated she did clean the rental unit but not the carpets and that the tenant should leave her ex-boyfriends trash and discarded items in the rental unit. The tenant went on to comment that it was not her fault that the landlord hired an 'expletive' bailiff and that she was tired of having bad landlords.

The landlord in this application is seeking \$2162.89 compensation for the following;

Filing fee 771969	\$50.00
Lost keys	\$12.05
Lost rental income June 2011	\$725.00
Carpet cleaning	\$112.00
Bailiff cost	\$700.00
Repair of damaged wall	\$301.28
Trash removal	\$73.44
Wall repair	\$76.77
Bathroom door lock replacement	\$25.00
Photo processing	\$37.35
2 Space heaters	\$112.00
Total Claim	\$2112.89

The tenant in this application is seeking return of double the security deposit and it was clarified for both parties when and how section 38(1) of the Act is applied.

The tenant stated that she had provided the landlord with her forwarding address in writing on June 1, 2011 and the landlord acknowledge that their application for dispute resolution was filed on June 14, 2011.

At approximately 20 minutes in to the hearing the tenant disconnected from the conference call.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to a monetary order for damages, loss and cleaning costs.

I find, pursuant to sections 62(2) and 67 of the Act, that the landlord is entitled to costs for damage to the unit and trash removal. In the absence of any receipts or proof of payment, I have accepted, from the photographic evidence submitted as evidence taken on June 14, 2011, that repairs and removal of trash was required after the tenant was removed from the rental property.

Receipts have not been submitted for the replacement of lost keys or the 2 space heaters the landlord claims the tenant has taken and the Act does not provide for the award of costs associated with litigation to either party to a dispute. Therefore the \$12.05 claim for key replacement, \$112.00 claim for space heaters and \$37.35 claim for photo developing is dismissed without leave to reapply.

As the landlord was awarded the filing fee for file 771969 in that hearing the landlord is not entitled to again claim that filing fee in this hearing. With the monetary award to the landlord under file 771969 for unpaid rent and the filing fee the landlord currently holds a security deposit balance of \$235.00.

I find that the landlord has established compensation for the following.

Filing fee 771969 (awarded in that hearing)	\$0.00
Lost keys	\$12.05
Lost rental income June 2011	\$725.00
Carpet cleaning	\$112.00
Bailiff cost	\$700.00
Repair of damaged wall	\$301.28
Trash removal	\$73.44
Wall repair	\$76.77
Bathroom door lock replacement	\$25.00
Photo processing (litigation costs)	\$0.00
2 Space heaters (no receipt)	\$0.00
Total Claim	\$2025.54

As the landlord has been successful in their application the landlord is entitled to recovery of the \$50.00 filing fee.

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has not met the burden of proving that they have grounds for entitlement to a monetary order for return of double the security deposit.

Section 38(6) of the *Residential Tenancy Act* provides in part that if a landlord does not comply with his statutory obligation to return the security deposit within 15 days, the landlord must pay the tenant double the amount of the deposit. The tenant gave her forwarding address to the landlord on June 1, 2011 and the landlord filed this application on June 14, 2011 which is within the 15 day time limit as outlined in the *Act* therefore the right for the tenant to claim double is invalid.

The tenant's application has been dismissed without leave to reapply.

Conclusion

I find that the landlord has established a monetary claim for **\$2025.54** in damages, loss and cleaning costs. The landlord is also entitled to recovery of the \$50.00 filing fee. I order the landlord pursuant to s. 38(4) of the *Act* to keep the \$235.00 balance of the tenant's security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$1840.49**.

If the amount is not paid by the tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: September 15, 2011

Residential Tenancy Branch