



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid utilities, cleaning expenses and liquidated damages as well to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord's agent said on July 19, 2011 she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail to a forwarding address provided by the Tenant on the move out condition inspection report. Section 90 of the Act says a document delivered by mail is deemed to be received by the recipient 5 days later (even if they refuse to pick up that mail). Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Are there utility arrears and if so, how much?
2. Is the Landlord entitled to compensation for cleaning expenses?
3. Is the Landlord entitled to liquidated damages?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This fixed term tenancy started on September 1, 2010 and was to expire on August 31, 2011 however it ended on June 28, 2011 when the Tenant moved out. Rent was \$830.00 per month payable in advance on the 1st day of each month. The Tenant was responsible for paying the electrical account which was in her name. The Tenant paid a security deposit of \$415.00 at the beginning of the tenancy.

The Parties completed a move in condition inspection report on September 1, 2010 which shows that aside from some wear and tear issues, the rental unit was reasonably clean. The Landlord's agent said the window coverings were professionally cleaned at the beginning of the tenancy. The Parties also completed a move out condition inspection report on June 28, 2011 which shows that the rental unit was not left

reasonably clean. The Tenant signed her acknowledgement that the report fairly represented the condition of the rental unit on that day.

The Landlord's agent said it is a term of the Parties' tenancy agreement that the Tenant would have the curtains professionally cleaned at the end of the tenancy. The Landlord's agent said it is also a term of the Parties' tenancy agreement that the Tenant would pay a "lease break fee" of \$550.00 if she ended the fixed term tenancy early and that this amount represented the Landlord's anticipated costs of re-renting the rental unit. The Landlord's agent said she has no knowledge if the Tenant's electrical account has been paid.

Analysis

Section 37 of the Act says that at the end of a tenancy, a Tenant must leave a rental unit reasonably clean and undamaged except for reasonable wear and tear. Based on the undisputed evidence of the Landlord, I find that the Tenant did not leave the rental unit reasonably clean and that as a result the Landlord incurred cleaning expenses of \$50.00. I also find that the Tenant did not clean the curtains at the end of the tenancy as is required of her under the terms of the tenancy agreement and as a result, I find that the Landlord is entitled to recover its expenses of \$45.00 to do so.

RTB Policy Guideline #4 (Liquidated Damages) at p. 1 says that a liquidated damages clause must be a "*genuine pre-estimate of loss at the time the contract is entered into, otherwise the clause will be held to constitute a penalty and will be unenforceable.*" The Landlord's agent claimed that the amount of \$550.00 was to compensate the Landlord for its expenses and time to re-rent the rental unit for the balance of the fixed term. In the absence of any evidence from the Tenant to the contrary, I find that the Landlord is entitled to recover this amount.

However, I find that there is insufficient evidence to support the Landlord's claim for unpaid utilities. The final utility account in question is in the Tenant's name and was issued on July 13, 2011. However, the Landlord's agent admitted that the Landlord will only become liable for that amount if the Tenant failed to pay her account and the Landlord's agent had no knowledge if the Tenant had paid the account or not. Consequently, this part of the Landlord's application is dismissed with leave to reapply upon providing evidence that the account has not been paid and the Landlord has become responsible for it.

As the Landlord has been successful in this matter, it is entitled pursuant to s. 72(1) of the Act to recover from the Tenant the \$50.00 filing fee it paid for these proceedings. I Order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit of \$415.00 in partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing as follows:

Liquidated Damages:	\$550.00
General Cleaning:	\$50.00
Curtain Cleaning:	\$45.00
Filing Fee:	<u>\$50.00</u>
Subtotal:	\$695.00
Less: Security deposit:	(\$415.00)
Accrued interest:	<u>(\$0.00)</u>
	\$280.00

Conclusion

A Monetary Order in the amount of **\$280.00** has been issued to the Landlord and a copy of it must be served on the Tenant. 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: October 19, 2011.

Residential Tenancy Branch