



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and for compensation for repair expenses to the rental unit.

The Landlord's application included the names of 2 parties as Tenants, namely, J.A. and M.H. The Landlord submitted into evidence a copy of the Parties' tenancy agreement which shows that only M.H. signed that document. Given that J.A. is not a party to the tenancy agreement, I find that he is not properly named as a Party in these proceedings and the style of cause is amended by removing him.

The Landlord said she served the Tenant(s) on September 27, 2011 with the Application and Notice of Hearing (the "hearing packages") by registered mail. Section 90 of the Act says that 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). According to the Canada Post online tracking system, a notification card was left for the Tenant(s) on September 28, 2011 and October 6, 2011. The Landlord admitted that she changed the lock on the Tenants' mail box on October 7, 2011 however she claimed there was no mail in their mail box at the time and therefore she believes the Tenant(s) would have received notice of the registered 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. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for damages to the rental unit?

Background and Evidence

This tenancy started on July 15, 2011. Rent is \$1,200.00 per month payable in advance on the 15th day of each month. The Landlord said a security deposit was required but was not paid by the Tenant. The Landlord said the Tenant's rent cheques for July 15 to August 14, 2011 and for August 15 to September 14, 2011 were returned for insufficient

funds. The Landlord said the Tenant promised to pay the overdue rent on September 7, 2011 but did not do so. Consequently, the Landlord said she contacted the building manager on September 10, 2011 and discovered that the police were called to the rental unit the evening of September 9, 2011, broke open the front door and arrested the Tenant and her roommate (J.A.).

The Landlord said on September 15, 2011, she posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 14, 2011 on the rental unit door. The Landlord said she believed this Notice was removed by the Tenant prior to the door being replaced on September 30, 2011 at which time it appeared that the Tenant had removed all of her possessions except for some food items. The Landlord replaced the locks to the front door of the rental unit at this time as well.

The Landlord said the rental unit was new when she purchased it in October 2009. The Landlord said she resided in the rental unit prior to renting it to the Tenant and that it was in good condition at the beginning of the tenancy. The Landlord did not complete a move in condition inspection report.

The Landlord said she incurred expenses of \$2,072.00 to replace the broken front door and casing as well as to install new locks on it. The Landlord said there were also damaged sections of drywall (ie. large holes) in the bedroom walls that had to be removed, replaced and repainted and a damaged en-suite bathroom door had to be repaired at a cost of \$1,050.00. The Landlord said the Tenant and her roommate also broke a section of a closet mirror that she had to replace at a cost to her of \$131.87. The Landlord said the Tenant also did not return any keys including mail box keys and as a result she incurred expenses of \$156.49 to install a new mailbox lock.

Analysis

I find on a balance of probabilities that the Tenant abandoned the rental unit as of September 30, 2011 (at which date all of her belongings had been removed). As a result, I find that it is unnecessary to grant the Landlord an Order of Possession and that part of her application is dismissed without leave to reapply.

In the absence of any evidence from the Tenant to the contrary, I find that there are rent arrears for the period July 15, 2011 to September 30, 2011 and as a result, I find that the Landlord is entitled to recover unpaid rent of \$3,000.00.

Section 32 of the Act says that a Tenant is responsible for damages caused by her act or neglect but is not responsible for reasonable wear and tear. RTB Policy Guideline #1 defines "reasonable wear and tear" as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion."

In the absence of any evidence from the Tenant to the contrary, I find that the damage to the front door of the rental unit was caused when the police attempted to gain entry on September 9, 2011. Consequently, I find that this damage is not reasonable wear and tear and that the Tenant is responsible for the cost of repairing the casing and replacing the door and locks in the amount of \$2,072.00.

In the absence of any evidence from the Tenant to the contrary, I also find that the damage to the bedroom walls and en-suite bathroom door was caused by the Tenant (and/or her roommate) and that it was not reasonable wear and tear. Consequently, I find that the Tenant is responsible for the cost of these repairs in the amount of \$1,050.00.

Similarly, I also find that the Tenant and/or her roommate were responsible for damaging a mirror closet door and that this was not the result of reasonable wear and tear. As a result, I further find that the Landlord is entitled to recover the cost of replacing this door in the amount of \$131.87. Given also that the Tenant did not return their keys to the Landlord after she vacated the rental unit, I find that the Landlord is entitled to recover the cost of replacing the mail box lock in the amount of \$156.49.

As the Landlord has been successful in this matter, she is entitled pursuant to s. 72(1) of the Act to recover from the Tenant the \$100.00 filing fee she paid for this proceeding. Consequently, the Landlord is entitled to a total monetary award of \$6,510.36.

Conclusion

A Monetary Order in the amount of **\$6,510.36** 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 24, 2011.

Residential Tenancy Branch