



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for an Order for unpaid rent, an Order to keep all or part of the security deposit, a monetary order for damage to the rental unit and money owed or compensation for damage or loss and to recover the filing fee for the Application.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail on July 14, 2011, the tenant did not appear. The landlord provided a copy of the registered mail tracking and signature information, testified that the mail was sent to the address provided by the tenant and successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act (the "Act"). Thus the hearing proceeded in the tenant's absence.

The landlord's Agents appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Issue(s) to be Decided

Has the tenant breached the *Residential Tenancy Act* (the "Act") or tenancy agreement, entitling the landlord to an Order for monetary relief and to recover the filing fee?

Background and Evidence

This one year, fixed term tenancy began on August 24, 2010, ended on January 7, 2011, when the tenant vacated the rental unit, monthly rent was \$800.00 and the tenant paid a security deposit of \$400.00 at the beginning of the tenancy.

The testimony by the landlord's Agent demonstrated that the tenant vacated the rental unit without sufficient written notice and without paying rent for the month of January 2011. The landlord's agent also submitted the landlord was not able to re-rent the rental unit until February 15, 2011, suffering a loss of income in the amount of \$428.57.

The landlord's agent testified that after the tenant vacated the rental unit, it was necessary to have the rental unit, carpet and drapes cleaned, as the tenant failed to have these items cleaned.

The landlord's agent also submitted that the tenant agreed to pay liquidated damages pursuant to the tenancy agreement, in the amount of \$400.00.

The landlord submitted evidence that the condition inspection report notating total charges of \$2,677.71 owed by the tenant was sent to the tenant, and that the tenant agreed to pay the landlord this amount, via his signature. Despite this figure listed on the condition inspection report, the landlord's total monetary claim listed on their application was in the amount \$2,249.14, for rental unit, carpet and drape cleaning, unpaid rent for January and February, liquidated damages and the filing fee paid for the application.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations, the landlord in this case, has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 45 (2) of the Residential Tenancy Act requires, among other things, a tenant to give notice to end the tenancy that is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

I am satisfied, based on the unopposed testimony of the landlord and evidence, that the tenant provided insufficient notice under the *Act* to vacate, causing the landlord to incur a loss of rent for January and February, 2011.

I also find that the tenant agreed that he owed total charges in the amount of \$2,677.71, by his signature to that effect on the condition inspection report. However, as the landlord has claimed the lesser amount of \$2,249.14, I therefore find through the testimony, evidence and agreement by the tenant that the landlord has established a **monetary claim** in the amount of **\$2,249.14**.

Conclusion

I find that the Landlord has established a monetary claim in the amount of **\$2,249.14**.

I **order** that the landlord retain the tenant's security deposit of \$400.00 in partial satisfaction of the claim and I **grant** the landlord an order under section 67 of the Act for the balance due of **\$1,849.14**.

I am enclosing a monetary order for \$1,849.14 with the landlord's Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) should the tenant fail to comply with this monetary order.

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 17, 2011.

Residential Tenancy Branch