



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 matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for damage to the unit, site or property, for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery on July 28, 2010. 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 with both parties in attendance.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Are there damages or losses to the Landlord and if so how much?
4. Is the Landlord entitled to compensation for the damages or losses and if so how much?
5. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on October 13, 2010 with a previous landlord and then renewed on May 28, 2011 with this Landlord. The tenancy was on a month to month basis. Rent was \$1,300.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$650.00 in October, 2010. The Landlord said on June 20, 2011 the Tenant gave him notice that they were moving out on July 1, 2011. The Tenant said they moved out of the unit on July 5, 2011.

The Landlord said a move in condition inspection was done with the previous landlord and it was carried forward for this tenancy by a clause in the tenancy agreement under additional items (4). The Landlord continued to say he did a move out condition inspection without the Tenant on July 8, 2011. The Landlord said he tried to contact the Tenant to made arrangements for the move out condition inspection, but was unable to do so. The Tenant said the Landlord did not give them a date and time to meet with him

to do the move out condition inspection, therefore they did not know about the move out inspection on July 8, 2011. The Tenant said they cleaned the unit on move out and left it in better condition than when they moved in. The Tenant continued to say that the Landlord said they left items in the unit, but these items were not theirs and were in the unit when they moved in. The Tenant said they complied with the Landlord's request to move these items on July 12, 2011, when the Tenant's partner worked with the new tenant to haul the items away. The Landlord submitted emails with the new tenant confirming this happened.

The Landlord continued to say the Tenant's agreed to pay the July, 2011 rent of \$1,300.00 and they both agreed if a new tenant was found for part of July the Landlord would return a portion of the Tenant's rent. The Landlord said a new tenant moved into the unit on July 15, 2011. The Landlord continued to say the Tenant put a stop payment on her July, 2011 rent cheque of \$1,300.00 and he is now claiming compensation from the Tenant for unpaid rent for July, 2011 of \$1,300.00. The Tenant said she cancelled her cheque and told the Landlord to keep her security deposit of \$650.00 to pay the rent for July 1 to July 15, 2011.

The Landlord continued to say that he is also claiming 4 hours of his labour at \$75.00 per hour to clean up the rental unit after the Tenant moved out, 6 hours of his labour at \$75.00 per hour to haul garbage and other items away from the unit as well as his time to make this application. In addition to this the Landlord said he is claiming a \$100.00 move out fee which is in the tenancy agreement, \$75.00 for the cancelled cheque which is in the tenancy agreement and \$55.00 for his expenses to make this application. The Landlord said his total claim is \$2,375.00.

The Tenant said they found the new tenant for the Landlord and they told him to keep the security deposit as payment for the ½ month rent as they had agreed to. The Tenant continued to say they cleaned the unit before they left and they were not offered an appointment to do the move out condition inspection. As well the Tenant said they complied with the Landlord's request for them to move the items that were not theirs which the Tenant's partner and the new tenant did on July 12, 2011. The Tenant said she believes they acted correctly in ending the tenancy and she said she does not believe the Landlord's claims are valid. The Tenant offered the Landlord the security deposit as full settlement of the dispute. The Landlord declined the Tenant's offer and requested the security deposit and \$1,000.00 as full settlement of the dispute. The Tenant declined the Landlord settlement offer.

Analysis

The Tenant did not give the Landlord proper notice to end the tenancy; therefore I find the Tenant is responsible for the rent for July, 2011 in the amount of \$1,300.00. In addition the Landlord is responsible under section 7. 2 of the act to do whatever is reasonable to minimize the damage or loss the Landlord may have. Both the Landlord and the Tenant said they had agreed if a new tenant was found the Landlord would adjust the rent accordingly and a portion of the July, 2011 rent would be returned to the Tenant. As well the Tenant said she had told the Landlord to keep her security deposit of \$650.00 as payment of the rent from July 1, to July 15, 2011 representing ½ a month's rent. Consequently I find that the Tenant did meet the agreement between the Landlord and the Tenant, which was to pay the rent until a new tenant was moved in, which was July 15, 2011. The Landlord did receive the full rent for July, 2011 of \$1,300.00, ½ from the Tenant and ½ from the new tenant. Therefore; I dismiss the Landlord claim for unpaid rent of \$1,300.00 and order the Landlord to retain the Tenant's security deposit of \$650.00 as full payment of unpaid rent.

In regard to the Landlord's claim for \$900.00 for his labour to clean and haul garbage away from the unit; when a claim is made for damages or loss the applicant must prove a loss or damage actually exists, it solely happened because of the respondents actions, prove the amount of the claim (by submitted into evidence invoices or receipts) and that the applicant mitigated or minimized the loss. As the landlord testified and provided evidence by way of emails with the new tenant it appears that the Tenant's partner and the new tenant cleaned the unit and hauled the items in question away from the unit. Therefore I find the Landlord has not established grounds to prove his labour claim of \$900.00. I dismiss the Landlord's claim for \$900.00 for his labour to clean the unit and haul garbage away from the rental unit without leave to reapply.

The Landlord has also made a claim for \$100.00 which is in the tenancy agreement for an early move out. Normally this fee is for advertising or other costs associated with renting the unit to a new tenant. The Landlord provided no evidence of what the fee was used for and the Tenant indicated they found the new tenant who rented the unit starting July 15, 2011. Consequently I find the Landlord has not established grounds to be granted this fee and it is dismissed without leave to reapply.

In addition the Landlord applied for a charge of \$75.00 for the cancelled cheque from the Tenant. Section 7(d) of the regulations says a fee of not more than \$25.00 can be charged for the return of a tenant's cheque therefore I award the Landlord \$25.00 for the July, 2011 rent payment cheque that the Tenant cancelled.

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As well the Landlord applied for \$3.50 for parking and \$1.50 for gas to make this application. These expenses are considered normal costs of doing business and are not part of the tenancy dispute therefore I dismiss these claims without leave to reapply.

As the Landlord has only been partially successful in this matter, he is ordered to bear the \$50.00 cost of the filing fee for this proceeding that he has already paid. I order the Landlord pursuant to s. 38 to keep the Tenant's security deposit as full payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears: (1/2 months rent)	\$ 650.00	
	Cancelled cheque fee	\$ 25.00	
	Subtotal:		\$ 675.00
Less:	Security Deposit	\$ 650.00	
	Subtotal:		\$ 650.00
	Balance Owing		\$ 25.00

Conclusion

I order the Landlord to retain the Tenant's security deposit in the amount of \$650.00 as full settlement of the unpaid rent.

A Monetary Order in the amount of \$25.00 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.

Dispute Resolution Officer