



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD and FF

Introduction

This application was brought by the landlord on December 5, 2011 seeking a monetary award for unpaid rent, costs of cleaning and repairs to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing in person on December 7, 2011, which I find sufficiently served pursuant to section 71(2)(c) of the *Act*, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his absence.

Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to a monetary award for the claims submitted and authorization to retain the security deposit in set off.

Claims in damages require that several factors be taken into account: the comparison of move-in vs. move-out condition inspection reports, whether damages are proven and attributable to the tenant, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable.

Damage or loss due to non-compliance with the legislation or rental agreement requires the claimant to take reasonable steps to minimize the loss claimed. The burden of proof falls to the applicant.

Background, Evidence and Analysis

This tenancy began on June 1, 2011 under a fixed term rental agreement set to end on May 1, 2012. Rent was \$1,950 per month and the landlord holds a security deposit of \$975 paid on June 1, 2011. The present landlord took possession of the rental unit on October 21, 2011.

During the hearing, the landlord referred to a 10-day Notice to End Tenancy for unpaid rent served on November 11, 2011 for rent due on November 1, 2011 and setting an end of tenancy date of November 24, 2011. A notice that had been served on November 1, 2011 was of no effect as it had been served too early.

The landlord stated that the tenant had refused to provide him with notice of a move-out date and remained in the rental unit until December 2, 2011 and left without providing a forwarding address or allowing for a joint move-out inspection.

The landlord stated that the tenant had not cleaned the rental unit and that three of the walls had been damaged by fasteners, requiring additional patching and painting.

The landlord stated that after he had served the tenant with the Notice of Hearing, the tenant expressed his belief that the fixed term agreement was of no effect as it had been signed by the landlord's predecessor.

The landlord submitted claims in rent, damage remediation and damage or loss under the legislation or rental agreement on which I find as follows:

Unpaid rent for November 2011 - \$1,950. When a tenanted rental unit is purchased by a new landlord, that new landlord inherits all of the rights and obligations of the former landlord with respect to the tenancy, including the right to require the rent from the tenant. This claim is allowed.

Loss of rent for December 2011 - \$1,950. I accept the landlord's evidence that the tenant did not give notice, remained until December 2, 2011 and left the rental unit in a state that required repairs and cleaning. I accept the evidence of the landlord that he began the cleaning and repairs immediately and acted to minimize his losses by advertising from December 7, 2011, lowering the asking rent by \$350 per month to get a new tenant for January 1, 2012.

Section 7 of the *Act* provides that if either party to a rental agreement suffers a loss due to the other's non-compliance with a rental agreement or the legislation, then the non-complaint party must compensate the other for that loss. In the present matter, I find that the landlord's losses are a direct result of the tenant's failure to pay the rent and vacate by the end date set by the notice. Therefore, the tenant is responsible for the landlord's loss of rent for December 2011 and this claim is allowed in full.

Damage to walls - \$300. The landlord submitted into evidence a receipt for \$1,450 for painting, \$300 of which is identified as for drywall repair and painting of three walls damaged by the tenant. In the absence of any evidence to the contrary, this claim is allowed.

General cleaning - \$100. The landlord stated that he had paid \$300 for general cleaning and gave his new tenant \$120 credit for carpet cleaning; however, not having a receipt for those expenses, he has reduced the claim to \$100. Under the circumstances, I find the claim to be reasonable, and it is allowed.

Filing fee - \$50. Having found merit in the application, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenants.

Security deposits (\$975). As authorized under section 72 of the *Act*, I find that the landlord is entitled to retain the security deposit in set off against the balance owed.

Thus, I find that the landlord is entitled to a monetary award calculated as follows:

Rent for November 2011	\$1,950.00
Damage to walls	300.00
General cleaning	100.00
Filing fee	<u>50.00</u>
Sub total	\$4,350.00
Less retained security deposit (No interest due)	<u>- 975.00</u>
TOTAL	\$3,375.00

Conclusion

In addition to authorization to retain the tenant's security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$3,375.00** for service on the tenant.

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: February 14, 2012.

Residential Tenancy Branch