



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPB, MNDC, MNSD, FF

Introduction

The present hearing was scheduled in response to the landlord's application for an order of possession / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee.

While the landlord's application filed on-line does not identify the request for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement by using the designation "MNDC," I find that the text in the landlord's application and the documentary evidence clearly describes the application for compensation of this nature.

Both parties participated in the hearing and gave affirmed testimony.

A previous hearing was held on December 13, 2011, in response to the tenant's application (file # 245898). By decision of the same date, a monetary order was issued in favour of the tenant for the double return of the security deposit and recovery of the filing fee $[(\$500.00 \times 2) + \$50.00]$. The landlord's application giving rise to the present hearing was filed after regular Branch office hours on December 12, 2011, which was the day before the hearing which resulted in the decision and order above.

Following issuance of the decision and order of December 13, 2011, the landlord filed an application for review consideration. In the result, by decision dated December 21, 2011, the decision and order of December 13, 2011 were confirmed.

As the tenancy ended prior to either the tenant's application or the landlord's application, and as new tenants took possession of the unit prior to both applications, I consider the landlord's application for an order of possession to have been made in error, and I consider it to be withdrawn.

Further, and as already noted above, the disposition of the security deposit has previously been decided in the decision of December 13, 2011. Accordingly, I have no

jurisdiction to consider that particular matter further. In this regard, Black's Law Dictionary defines *res judicata*, in part as follows:

Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

Issue(s) to be Decided

Whether the landlord is entitled to a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy was from October 1, 2010 to October 1, 2011. While only one (1) tenant is named in this application, two (2) tenants are named on the tenancy agreement. Monthly rent of \$990.00 was payable in advance on the first day of each month, and a combined security & pet damage deposit in the total amount of \$500.00 was collected. A move-in condition inspection report was not completed.

By letter dated July 31, 2011, the tenants gave notice to end the tenancy effective August 31, 2011. A move-out condition inspection report was not completed.

The landlords testified that after receiving the tenants' notice, they started advertising for new renters on craigslist. However, the landlords testified that new renters were not found until October 1, 2011. In the result, the landlords seek compensation for loss of rental income for the month of September 2011, in addition to recovery of costs arising from certain cleaning and repairs.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 45 of the Act addresses **Tenant's notice**, and provides in part:

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 37 of the Act speaks to **Leaving the rental unit at the end of a tenancy**, and provides in part:

37(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and...

Residential Tenancy Policy Guideline # 1 addresses “Landlord & Tenant – Responsibility for Residential Premises,” and under the heading CARPETS, provides in part as follows:

- 3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.
- 4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

Based on the documentary evidence and affirmed testimony of the parties, the various aspects of the landlord’s application and my findings around each are set out below.

\$990.00: loss of rental income for September 2011. I find that the tenants’ method of ending tenancy did not comply with the statutory provisions set out above; specifically, the tenants ended the tenancy prior to the end of the fixed term. Further, I find no evidence that the parties entered into a Mutual Agreement to End a Tenancy. However

in the absence of documentary evidence to support the landlord's claim related to advertising undertaken in order to mitigate the loss of rental income, or documentary evidence in support of the start date of October 1, 2011 for a tenancy with new tenants, I find on a balance of probabilities that the landlord has established entitlement limited to \$495.00*, which is half the amount claimed.

\$350.00: plumbing related expenses. In the absence of the comparative results of move-in and move-out condition inspection reports, and/or evidence that the landlord has incurred any of the expenses claimed, and/or evidence that the absence of any repairs having been completed precluded entry into a new tenancy or had an apparently negative impact on the new tenancy, this aspect of the application is hereby dismissed.

\$42.56: flooring. In the absence of the comparative results of move-in and move-out condition inspection reports, this aspect of the application is hereby dismissed.

\$144.48: carpet cleaning. I note evidence that the landlord had the carpets cleaned following the end of the tenancy; I also note evidence that the tenant undertook to rent / purchase the equipment / supplies required to clean the carpets prior to the end of tenancy. While it may be that the landlord was not satisfied that the carpets were sufficiently clean after cleaning efforts made by the tenant, I am unable to conclude that the carpets were not left "reasonably clean" as required by section 37 of the Act, as above. Further, as previously noted, there are no comparative results of move-in and move-out condition inspection reports in evidence. In summary, this aspect of the application is hereby dismissed.

\$80.00: general cleaning in the unit. In the absence of comparative results of move-in and move-out condition inspection reports, I find that there is insufficient evidence that the unit was not left "reasonably clean" at the end of tenancy as required by section 37 of the Act. This aspect of the application is, therefore, hereby dismissed.

\$41.99: cost of replacement heater. The landlord claimed that the heater was functioning at the start of tenancy but not functioning at the end of tenancy. The tenant claimed that the heater was not functioning perfectly at the start of tenancy and that it was not used very much during the tenancy. I note that there is no evidence that the tenant discarded the heater; rather, the tenant mistakenly packed the heater at the end of tenancy and later returned it to the landlord. In the absence of any evidence pertinent to the purchase cost or age of the original heater, I find on a balance of probabilities that the landlord has established entitlement limited to the nominal amount of \$10.00*.

\$50.00: filing fee. As the landlord has achieved limited success with this application, I find that the landlord has established entitlement limited to recovery of \$25.00, which is half the filing fee.

Conclusion

Following from all of the above, pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$530.00** (\$495.00 + \$10.00 + \$25.00). This order may be served on the tenant, filed in the Small Claims Court 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: February 22, 2012.

Residential Tenancy Branch