



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR; MNR; MNDC, MNSD; FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and loss of revenue; to retain the security deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

Preliminary Matter

At the outset of the Hearing, it was determined that the Tenant moved out of the rental unit on January 9, 2012. Therefore an Order of Possession is not required and this portion of the Landlord's application was dismissed.

Issues to be Decided

- Is the Landlord entitled to the monetary award he seeks?

Background and Evidence

This tenancy began on November 1, 2009. It began as a one year term lease and continued after the term on a month-to-month basis. A copy of the tenancy agreement was provided in evidence. Monthly rent at the end of the tenancy was \$1,176.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$575.00 at the beginning of the tenancy.

The Landlord gave the following testimony and evidence:

The Landlord testified that the Tenant gave written notice on December 14, 2011, that he would be moving out of the rental unit on January 15, 2012. The Tenant's notice to end tenancy was provided in evidence.

The Landlord stated that he advised the Tenant that if he was not able to re-rent the rental unit for January 15, 2012, that the Tenant would be responsible for paying full

rent for the month of January, 2012. He testified that the Tenant refused to pay full rent and provided the Landlord with a cheque for \$600.00 only, and then stopped payment on the cheque. The Landlord testified that the bank charged him a \$5.00 fee. The Landlord provided a copy of the Tenant's dishonoured cheque and the chargeback advice notice from his bank.

The Landlord testified that the Tenant moved out on January 9, 2012 without shampooing the carpet and agreed that the Landlord could deduct the cost of cleaning the carpet from his security deposit. The Landlord provided a copy of the invoice for carpet cleaning and a copy of the Condition Inspection Report in evidence.

The rental unit was re-rented effective February 1, 2012.

The Landlord seeks a monetary award, calculated as follows:

Unpaid rent for January, 2012	\$1,176.00
Cost to shampoo the carpet	\$224.00
Late payment fee	\$20.00
Stop payment fee	<u>\$5.00</u>
TOTAL monetary claim	\$1,425.00

The Tenant gave the following testimony:

The Tenant stated that he did not pay rent for January, 2012, because he gave a full month's notice. He stated that he could have moved out earlier and that he had a verbal agreement with the Landlord that the Landlord would try to re-rent the rental unit for January 1, 2012. The Tenant stated that he did not believe the Landlord tried hard enough to re-rent the rental unit for January 1, 2012.

Analysis

Section 45(1) of the Act states:

Tenant's notice

45 (1) A tenant may end a periodic 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, **and**

(b) **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.**

(emphasis added)

Rent was due on the first day of each month and therefore I find that a notice to end the tenancy provided on December 14, 2011, was effective on January 31, 2012, in accordance with the provisions of the Act.

The Landlord had written notice that the Tenant was moving out on January 15, 2012. I find that the Landlord took reasonable steps to mitigate his loss and re-rented the rental unit for February 1, 2012. Therefore, I find that the Landlord is entitled to unpaid rent for the month of January in the amount of **\$1,176.00**.

Section 7 of the Regulation provides that a landlord may charge a service fee charged by a financial institution to the landlord for the return of a tenant's cheque. Based on the documentary evidence provided by the Landlord, I find that the Landlord is entitled to recover the **\$5.00** service fee from the Tenant.

Section 7 of the Regulation also provides that a landlord may charge an administration fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent, as long as there is a clause in the tenancy agreement providing for that fee. There is an addendum to the tenancy agreement which provides: "**Every day** that rent is late there will be \$25.00 a day charge." I find that this is not a valid clause as it is not supported by the Act. Section 5 of the Act provides that landlords and tenants may not make agreements that are contrary to the provisions of the Act and that any attempt to do so is of no effect. Therefore, the Landlord's application for a late fee in the amount of \$20.00 is dismissed.

The Tenant does not dispute that he agreed in writing (on the Condition Inspection Report) that the Landlord could deduct the cost of carpet cleaning from the security deposit. This leaves a residual balance of **\$351.00** in the security deposit (\$575.00 - \$224.00). Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the residual security deposit towards partial satisfaction of his monetary award.

The Landlord has been largely successful in his application and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

I hereby provide the Landlord a Monetary Order against the Tenant, calculated as follows:

Unpaid rent for January, 2012	\$1,176.00
Recovery of filing fee	<u>\$50.00</u>
Subtotal	\$1,231.00

Less residual security deposit after deducting cost of cleaning carpet	<u>-\$351.00</u>
TOTAL	\$880.00

Conclusion

I hereby grant the Landlord a Monetary Order in the amount of **\$880.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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 03, 2012.

Residential Tenancy Branch