



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MNDC, MND, FF

Introduction

This hearing dealt with an application for dispute resolution under the Residential Tenancy Act (the “Act”) filed by the landlord seeking a monetary order for unpaid rent, for damage to the unit, and money owed or compensation for damage or loss, for authority to retain the tenant’s security deposit and to recover the cost of the filing fee from the tenant.

The landlord’s agent appeared and gave affirmed testimony.

The landlord testified that the tenant was served with the Application for Dispute Resolution and Notice of Hearing by registered mail on January 26, 2012. The landlord supplied evidence of the tracking number of the registered mail.

The landlord testified that the tenant still resides at another residential property managed by the landlord and that she called the tenant just prior to the hearing to remind him of the same.

I find the tenant was served in a manner complying with section 89 of the Residential Tenancy Act and the hearing proceeded in the tenant’s absence.

The landlord was provided the opportunity to present her evidence orally and in documentary form.

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

Issue(s) to be Decided

Is the landlord entitled to a monetary order pursuant to sections 38, 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

This one year, fixed term tenancy began on December 1, 2010, and ended on November 30, 2011, monthly rent was \$960.00 and the tenant paid a security deposit of \$480.00 at the beginning of the tenancy.

The landlord's monetary claim is in the amount of \$777.00, which includes \$45.00 for drape cleaning, \$225.00 for general cleaning, \$55.00 for general repairs, \$307.00 for hauling, and the filing fee of \$50.00.

The landlord's relevant evidence included a move-in and move-out condition inspection report, the tenancy agreement, receipts for the claimed expenses, a tenant ledger sheet showing expenses and deductions and a letter dated December 12, 2011, from the tenant to the landlord authorizing the landlord to remove his belongings from the rental unit and agreeing that he was responsible for the costs.

The landlord's agent explained that their actual damages and loss was for a larger amount, but that this amount had been reduced by the amount of the tenant's security deposit, which had been applied to the unpaid rent of \$395.00 and additional hauling expense.

The landlord's agent explained that the security deposit was credited to the landlord's damage and loss due to the tenant's written authority as shown on the condition inspection report.

The landlord's agent submitted that the repair and cleaning was necessary due to the condition of the rental unit when the tenant vacated.

The landlord submitted proof that the expenses were incurred and that the tenant agreed to the amount charged.

Analysis

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

In the absence of the tenant who was duly served, the landlord's evidence will be the preferred evidence.

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the landlord to prove damage or loss.

I find the landlord provided sufficient evidence of the damage and unclean state of the rental unit caused by the tenant and of unpaid rent owed by the tenant. In reaching this conclusion, I was persuaded by the condition inspection report, the tenant's signature on the condition inspection report agreeing to the security deposit deduction and the responsibility of the other costs, the tenant's letter agreeing to the hauling costs and proof of the expenses incurred.

I therefore find that the landlord has established their **monetary claim** in the amount of **\$777.00**, which includes the filing fee of \$50.00.

Conclusion

I grant the landlord a monetary order in the amount of **\$777.00** for their monetary claim.

I am enclosing the monetary order for **\$777.00** with the landlord's Decision. This monetary order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement 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: March 29, 2012.

Residential Tenancy Branch