



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR; MNR; MNDC, MNSD; FF

Introduction

The Landlord filed an Application for Dispute Resolution with respect to these issues in October, 2010. The Hearing took place on November 16, 2010. The Tenant did not sign into the teleconference on November 16, 2012. The Dispute Resolution Officer found that the Landlord did not serve the Notice of Hearing documents in a manner provided in Section 89 of the Act, nor did he apply for an alternate method of service. Therefore the Landlord's application was dismissed with leave to reapply.

This is the Landlord's re-application for a Monetary Order for unpaid rent and damages to the rental unit; for compensation for damage or loss under the Act, regulation or tenancy agreement; 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.

The Landlord testified that he served the Tenant with the Notice of Hearing documents and copies of his documentary evidence by registered mail on February 27, 2012, to an address he discovered after hiring a private investigator. The Landlord did not provide any documentary evidence in support of this, however the Tenant signed into the Hearing and therefore I find that the Tenant was sufficiently served with the Notice of Hearing pursuant to the provisions of Section 71(c) of the Act.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order pursuant to the provisions of Section 67 of the Act?
- May the Landlord apply the security deposit in partial satisfaction of his monetary award?

Background and Evidence

This tenancy began on May 1, 2009 and ended in April of 2010. Monthly rent was \$875.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$437.50 at the beginning of the tenancy.

The Landlord gave the following testimony:

The Tenant did not provide due notice to end the tenancy and the rent cheque for April, 2010 was returned to the Landlord, insufficient funds. The Landlord seeks a monetary award for unpaid rent for April, 2010, in the amount of \$875.00. The Landlord testified that he gave the Tenant a 10 Day Notice to End Tenancy for Unpaid Rent.

The Landlord testified that he re-rented the rental unit on May 15, 2010. He seeks loss of income for the period of May 1 – 14, 2010 in the amount of \$437.50.

The Landlord testified that the Tenant did not leave the rental unit reasonably clean at the end of the tenancy, and that he left 2 trailer loads of garbage and dilapidated furniture at the rental property. He stated that the yard was not cared for and that the rental property required power washing inside and out. The Landlord testified that the Tenant did not return the keys to the rental unit. The Landlord provided photographs of the rental unit and yard in evidence along with an invoice from his agent.

In addition to unpaid rent and loss of income, the Landlord seeks a monetary award for the following:

Cost to replace damaged stove rings and enamel pan	\$31.71
Cost to take garbage to landfill	\$4.50
Locksmith	\$73.92
Cost to dispose of larger items	\$100.00
Cost to clean house (12 hours @\$20.00 per hour)	\$240.00
Agent's invoice (cleaning, cutting grass, repairs, costs for re-renting)	\$495.00
Filing fee for previous Application for Dispute Resolution	\$50.00
Filing fee for this Application for Dispute Resolution	\$50.00
Accrued interest on original claim (\$1,870.13 @ 21 mths @3.65%)	\$119.45
Cost to track down Tenant (8 hours @ \$25.00 per hour)	\$200.00

The Tenant gave the following testimony:

The Tenant testified that he moved out and left a note to the Landlord's agent and left it in her mailbox.

He stated that he lost his job and was unemployed for 2 months and therefore there was no way the Landlord could contact him.

The Tenant denied that he received a 10 Day Notice to End Tenancy.

The Tenant testified that the Landlord came into the rental unit without his knowledge or consent and left him bibles. He stated that the Landlord was accusing him of growing pot in the rental unit. The Tenant testified that the 10 Day Notice to End Tenancy was left on his kitchen counter, which proves the Landlord was in his home without his knowledge or consent.

The Tenant testified that the photographs provided by the Landlord were taken before he moved out and that he cleaned some but not all of the rental unit. The Tenant testified that the last time he was at the rental unit was in the middle of April, 2010.

The Landlord gave the following reply:

The Landlord disputed that the photographs were taken before the Tenant moved out. He referred to the picture of a trailer full of garbage and stated that the Tenant did not leave the trailer there. The Landlord stated that the Tenant had no intention of cleaning anything and just walked away without leaving a forwarding address.

The Landlord stated that he gave 48 hour notice that he was going to access the rental unit.

Analysis

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish his claim on the civil standard, the balance of probability.

To prove a loss and have the Tenant pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant **in violation of the Act**,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Landlord provided copies of dishonoured cheques for April and May, 2010 rent. Based on the testimony of both parties, I find that the Tenant did not provide due notice to end the tenancy pursuant to the provisions of Section 45 of the Act and that the Landlord has suffered a loss as a result of the Tenant's breach of Section 45 of the Act.

I find that the Landlord is entitled to his claim for loss of rent and loss of income for April and ½ of May, 2010.

The parties disagreed with respect to whether or not the Tenant left the garbage at the rental unit, and to what extent he cleaned the rental unit prior to abandoning it. Where the parties disagreed, I prefer the testimony of the Landlord. The Tenant was vague and contradictory in his testimony. For example, he stated that he did not receive a Notice to End Tenancy for Unpaid Rent but later testified that the Notice was left on the kitchen counter. Section 37 of the Act requires a tenant to leave a rental unit reasonably clean and undamaged and to return all keys to the rental unit at the end of a tenancy. I find that the Tenant did not comply with the provisions of Section 37 of the Act and that the Landlord suffered a loss as a result of that non-compliance. I find the amounts claimed by the Landlord to be reasonable, based on the photographs provided, and allow the Landlord's claim for the cost of replacing the stove rings and pan; the locksmith; cost of disposing of the garbage and old furniture; and 12 hours of cleaning the rental unit.

The Landlord's application to recover the cost of the filing fee from his previous Application is dismissed. That Application, which included an application to recover the filing fee, was dismissed on November 16, 2010. There is no provision in the Act to allow interest on claims and that portion of his application is also dismissed.

The Landlord's application for compensation with respect to efforts made tracking down the Tenant is dismissed. Section 67 allows me to provide compensation to the Landlord for loss resulting from the Tenant failing to comply with the Act. There is no provision in the Act for that compels a tenant to provide his forwarding address at the end of a tenancy.

The Landlord has applied to recover his cost of his agent's time in meeting with prospective tenants, cutting the lawn, painting, spreading pea gravel and weed control, cleaning the furnace filter and oiling the motor and some clean up of the house and yard. Most of the items are not recoverable. For example, Policy Guideline #1 provides that a landlord is responsible for painting a rental unit at reasonable intervals, unless the work is necessary because of damages for which the tenant is responsible. There was insufficient evidence that the Tenant damaged the walls beyond reasonable wear and tear, or that the rental unit had been painted just before the beginning of the tenancy. The Guideline also provides that a landlord is responsible for furnace maintenance, including replacing filters. Generally, a tenant is responsible for mowing lawns, but is not responsible for spreading pea gravel. The cost associated with finding new tenants is the cost of doing business. The Landlord did not provide a detailed breakdown of how long it took his agent to do these things, and lumped them all together at 33 hours

(\$15.00 per hour). Therefore, I dismiss this portion of the Landlord's claim as I find that he did not provide a breakdown of the cost of the allowable claims.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of his monetary claim. No interest has accrued on the security deposit.

The Landlord 's application had merit and I find that he is entitled to recover the cost of the \$50.00 filing fee from the Tenant.

The Landlord has established a monetary award, calculated as follows:

Unpaid rent for April, 2010	\$875.00
Loss of revenue from May 1 – 15, 2010	\$437.50
Cost to replace stove rings and pan damaged by Tenant	\$31.71
Locksmith	\$73.92
Cost to clean rental unit at end of tenancy	\$240.00
Cost to take garbage to landfill	\$4.50
Cost to remove and dispose of heavy items	\$100.00
Recovery of the filing fee for April 24, 2012 Application	<u>\$50.00</u>
Subtotal	\$1,812.63
Less security deposit	<u>- \$437.50</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$1,375.13

Conclusion

I hereby provide the Landlord a Monetary Order in the amount of **\$1,375.13** 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: April 30, 2012.

Residential Tenancy Branch