



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR / OPC, MNR, MND, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's application for an order of possession / a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

As the tenants have now vacated the unit, the landlord withdrew the aspect of the application seeking an order of possession. During the hearing the tenants provided their current mailing address.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from December 1, 2011 to December 1, 2012. Monthly rent of \$750.00 is payable in advance on the first day of each month. While the agreement refers to the collection of \$375.00 as a "security deposit," there is an intermingling of language in the agreement which also includes reference to "liquidated damages."

As to utilities, the agreement provides that the tenants will pay \$35.00 per month for cable, in addition to 2/3 of the monthly cost of hydro and 1/2 the monthly cost of gas. The agreement also provides that a fee of \$20.00 will be assessed for late payment of rent. A move-in condition inspection report was completed on November 25, 2011.

By letter dated February 28, 2012, the tenants gave notice to end the tenancy effective March 31, 2012. The landlord claims that he received this letter on March 1, 2012.

The landlord issued a 1 month notice to end tenancy dated and served on February 29, 2012. The date shown on the notice by when the tenants must vacate the unit is March 31, 2012, and reasons shown on the notice for its issuance are as follows:

Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- put the landlord's property at significant risk

Subsequently, arising from rent which was unpaid when due on March 1, 2012, the landlord issued a 10 day notice to end tenancy for unpaid rent dated March 2, 2012. The notice was personally served on the tenants on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is March 12, 2012.

Ultimately, the tenants vacated the unit on March 15, 2012, and it appears that a move-out condition inspection report was completed on or about March 16, 2012.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute and undertook to achieve at least a partial resolution.

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 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties led to a partial resolution. In the result, undisputed aspects of the landlord's claim are as follows:

\$750.00: unpaid rent for March 2012.

\$18.80: replacement toilet seat.

\$44.77: replacement of shower head.

\$110.90: hydro (December 7/11 – February 6/12).

\$75.00: hydro (April 7/12 – April 30/12).

\$78.10: gas (January 6/12 – February 6/12).
\$200.00: gas (February 6/12 – March 6/12 – April 6/12 – April 30/12: \$75.00 + \$75.00 + \$50.00).

***Sub-total: \$1,277.57**

\$410.90: hydro (February 7/12 – April 6/12). This cost is a pre-estimate as the landlord has not yet received a statement confirming the cost. As the parties were unable to negotiate a mutually agreeable amount for settlement, the landlord withdrew this aspect of the application for the present time. The landlord has the option of reapplying in relation to this aspect of his claim.

Based on the documentary evidence and testimony, the remaining aspects of the landlord's claim and my findings around each are set out below.

LOSS OF RENTAL INCOME & LIQUIDATED DAMAGES

\$750.00: unpaid rent / loss of rental income for April 2012. Despite advertising, the landlord testified that new renters have not yet been found for the unit. Accordingly, I find that the landlord has established entitlement to the full amount claimed. In this regard, the attention of the parties is drawn to section 45 of the Act which speaks to **Tenant's notice**, and section 7 of the Act which addresses **Liability for not complying with this Act or a tenancy agreement**.

\$375.00: liquidated damages. While the "liquidated damages" provision is not clearly articulated in the tenancy agreement and is linked with reference to a "security deposit," I find that the landlord has established entitlement to liquidated damages on the basis of the tenants' having breached the fixed term of the tenancy agreement by ending the tenancy before the end date of the agreement. The attention of the parties is drawn to Residential Tenancy Policy Guideline # 4 which addresses "Liquidated Damages."

***Sub-total: \$1,125.00**

LABOUR

\$160.00: cleaning the unit (4 hours / 2 persons).
\$10.00: replacing toilet seat (1/2 hour @ \$20.00 per hour).
\$10.00: replacing shower head (1/2 hour @ \$20.00 per hour).
\$20.00: replacing / installing door locks & dead bolt (1/2 hour x 2 @ \$20.00 per hour).

I find that the landlord has established entitlement to the full amount claimed.

***Sub-total: \$200.00**

MATERIALS / SUPPLIES

\$20.00: paint.

\$31.33: door locks and entry fob.

\$41.41: deadbolt.

I find that the landlord has established entitlement to the full amount claimed.

***Sub-total: \$92.74**

OTHER

\$70.00: cable/internet for March + April 2012.

I find that the landlord has established entitlement to the full amount claimed.

***Sub-total: \$70.00**

As the landlord has achieved a measure of success with his application, I find that he has also established entitlement to recovery of the ***\$50.00** filing fee.

In summary, I find that the landlord has established a claim of \$2,815.31. I order that the landlord retain the security deposit of \$375.00, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$2,440.31 (\$2,815.31 - \$375.00)

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$2,440.31**. This order may be served on the tenants, 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: April 05, 2012.

Residential Tenancy Branch