



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for a monetary Order for damage to the unit, unpaid rent, compensation for damage or loss, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided. Photographs submitted by the tenant were not given to the landlord within the required time-frame; they were excluded and not considered.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for damage to the rental unit?

Is the landlord entitled to compensation for unpaid rent?

Is the landlord entitled to compensation for damage or loss under the Act?

Is the landlord entitled to retain the deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy agreement submitted as evidence indicated that the tenancy commenced on January 1, 2012, and was a month-to-month tenancy. The tenant rented a room in a basement unit that had 3 bedrooms, a kitchen and bathroom. Tenants in common rented the other 2 rooms; the common area was shared.

Rent was \$590.00 per month; the parties did not agree on the term in relation to utilities. The tenancy agreement indicated that the tenant was to pay a percentage of utility costs, but no set amount was indicated. The tenant stated the rent included utility costs; the landlord stated she adjusted the utility cost, depending upon how many tenants occupied the unit. The tenancy agreement included boxes that were used to indicate services provided; utilities were not included in this portion of the agreement.

A deposit in the sum of \$295.00 was paid. The landlord confirmed receipt of the tenant's written forwarding address on March 20, 2012. The landlord applied claiming against the deposit on March 29, 2012.

A move-in condition inspection report was not completed. The parties did not agree on the state of the unit at the start of the tenancy; the tenant stated he had to vacuum, clean the oven and that the fridge was full of items. The landlord stated that the unit had been cleaned and that the tenant had initialed the agreement which required the tenant to inspect the unit at the start of the tenancy and to notify the landlord, in writing within 3 days, of any deficiencies.

The landlord made the following claim:

Clean stove	45.00
General cleaning	35.00
Rent for February, March	1,180.00
Utilities	182.75
Late payment charge	50.00
Registered mail	20.00
TOTAL	1,557.75

The parties agreed that the tenant vacated the unit on January 13, 2012. The tenant acknowledged that he did not pay rent beyond January.

The tenant vacated the unit as he believed there was a mould problem that was affecting his health. The tenant had discussed the problem with the landlord but he did not think the landlord was taking appropriate action, so he ended the tenancy. The landlord confirmed that she had possession of the unit effective January 13, 2012.

The tenancy agreement included a number of charges that could be considered if the unit was not cleaned at the end of the tenancy; those amounts match the sums claimed by the landlord for cleaning that she completed. The landlord stated the tenant did not leave his room or the common area clean.

The tenancy agreement required a late payment against the security deposit in the sum of \$10.00 per day, at a minimum of \$20.00. The landlord has claimed \$50.00 in late fees.

The landlord claimed costs for registered mail.

The tenant stated that the room was not cleaned at the start of the tenancy; he moved furniture and had to vacuum; his mother spent time cleaning the oven, which did not appear to have been cleaned in some time. The tenant denied leaving the room and common area dirty and stated he vacuumed, cleaned the bathroom and kitchen area.

The tenant acknowledged that he paid January 2012, rent only.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In the absence of a move-in condition inspection report, I find that the landlord has failed to demonstrate the tenant left the unit in a state that was not reasonably clean. There was no record of the state of the unit at the start of the tenancy, nor was there any record as to whether the tenant or another tenant-in-common failed to keep the common area clean. Further, there was no verification of the costs claimed by the landlord. Therefore, I find that the cleaning costs are dismissed.

Section 45(1) of the *Act* provides:

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.

As the tenant vacated the rental unit without providing proper written notice at least 1 month in advance, I find that the landlord has established a claim for loss of February, 2012, rent in the sum of \$590.00. As this was a month-to-month tenancy, I dismiss the claim for loss of March, 2012, rent.

The term of the tenancy that requires payment of utilities indicated that a percentage must be paid; no amount was given. The tenant believed that utility costs were included with the rent; he had not yet received a copy of the agreement he had signed.

Section 6(3) of the Act provides:

- (3) A term of a tenancy agreement is not enforceable if*
- (a) the term is inconsistent with this Act or the regulations,*
 - (b) the term is unconscionable, or*
 - (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.*

In the absence of a clearly expressed term in relation to the amount of utilities to be paid, I find that the term is vague and unenforceable. Therefore, the claim for utility costs is dismissed.

The tenancy term contained in the agreement is also unenforceable. The amounts of fees indicated in the agreement are in breach of the fees provided by the Residential Tenancy Regulation. Therefore, the claim for late fees is dismissed.

The landlord has claimed the cost of registered mail. An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act, but “costs” incurred with respect to filing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. As a result, this portion of the claim is denied and the landlord is at liberty to write it off as a business expense.

Therefore, the landlord is entitled to the following:

	Claimed	Accepted
Clean fridge	45.00	0
General cleaning	35.00	0
Rent for February, March	1,180.00	590.00
Utilities	182.75	0
Late payment charge	50.00	0
Registered mail	20.00	0
TOTAL	1,557.75	590.00

I find that the landlord’s application has merit, and I find that the landlord entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord will retain the deposit in partial satisfaction of the claim.

Conclusion

I find that the landlord established a monetary claim, in the amount of \$640.00, which is comprised of loss of February, 2012, rent revenue and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will retain the \$295.00 deposit in partial satisfaction of the claim.

Based on these determinations I grant the landlord a monetary Order for \$345.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The balance of the claim is dismissed.

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: May 29, 2012.

Residential Tenancy Branch