



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit; unpaid rent; damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on March 13, 2012, copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail at the address noted on the Application. A Canada Post tracking number was provided as evidence of service. The landlord was given a forwarding address in early February, 2012, when the tenant gave notice to end the tenancy, and used that address for service.

These documents are deemed to have been served in accordance with section 89 of the Act; however the tenant did not appear at the hearing.

Preliminary Matters

At the start of the hearing the landlord confirmed submission of 7 pages of evidence, plus 8 photographs. The landlord stated this evidence was served to the tenant, as part of the hearing package.

The landlord was offered the opportunity to withdraw his application; however, the landlord chose to continue with the hearing. After the hearing had commenced the landlord indicated he might wish to withdraw, but upon further consideration he decided to proceed with his application.

The landlord acknowledged he was claiming loss of rent revenue from March to May, 2012, only. Loss of rent revenue for June, 2012, was not considered.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for damage to the unit in the sum of \$150.00?

Is the landlord entitled to compensation in the sum of \$761.00 for unpaid utilities?

Is the landlord entitled to compensation for loss of rent revenue in the sum of \$6,600.00?

May the landlord retain the deposit in partial satisfaction of the claim?

Is the landlord entitled to filing fee costs?

Background and Evidence

The landlord testified that the tenant signed a fixed-term tenancy agreement on June 1, 2011; the tenancy was to end on June 30, 2012. Rent was \$1,700.00 per month; a \$750.00 deposit was paid. The landlord did not supply a copy of the tenancy agreement.

The landlord has made the following claim:

Damage to the unit	150.00
Utilities	761.00
TOTAL	6,011.00

A condition inspection report was completed at the start of the tenancy; a copy was not supplied as evidence.

In early February, 2012, the tenant gave written notice that she would vacate the unit at the end of February.

The landlord attempted to complete a condition inspection report but no specific dates were given to the tenant during February. After the tenant vacated, the landlord attempted, via text message and email, to arrange a meeting for March 5, 2012. An inspection was not completed.

The landlord stated he has advertised the unit on 3 popular internet sites but has yet to re-rent the unit. No copies of advertisements were supplied as evidence of attempts to re-rent the unit. The landlord has claimed loss of rent revenue from March to May, 2012, inclusive in the sum of \$5,100.00; he has yet to suffer a loss of June rent.

The landlord supplied a copy of an invoice he created to reflect utilities owed. The tenant was to pay one-half of the hydro costs; the hydro is in the landlord's name. The tenant was to pay \$70.00 per month and then copies of the bill would be supplied to the tenant and adjustments made for payments owed or funds to be returned to the tenant. Copies of the hydro bills were not supplied as evidence.

The invoice supplied as evidence indicated that either \$481.18 or \$418.18 was due; the tenant owed one-half. The landlord confirmed that the tenant owed on-half of \$418.18; which differed from the amount claimed on the application; \$761.00. The tenant was served notice of the hydro bills as part of the hearing package.

The photographs showed a dirty oven, bathtub, washing machine and some scrapes to the wood floor and the walls. The landlord stated they have not yet cleaned or made repairs. The amount claimed is an estimate of costs that will be incurred.

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.

The landlord did not submit a copy of the tenancy agreement, as proof of a fixed-term tenancy. Therefore, I was not able to confidently establish the terms of the agreement. In the absence of a written agreement which clearly indicates a fixed-term, I find that the claim for loss of rent revenue is dismissed.

I have considered the landlord's application and find, on the balance of probabilities that the landlord has also failed to prove he mitigated the loss he has claimed.

Section 7 of the *Act* provides:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The landlord failed to provide any evidence of attempts made to re-rent the unit. No copies of advertisements; no record of enquires by prospective tenants, record of viewings, or any other evidence was supplied. The landlord did not indicate that rent had been adjusted in an attempt to attract possible tenants. Section 7 of the *Act* requires a party to mitigate claims; there was no evidence before me that this occurred.

In relation to the claim for utilities, there was no evidence before me that the tenant had been given copies of the hydro bills, upon which the landlord based the invoice that was created. Copies of the hydro bills were not supplied as evidence to the Residential Tenancy Branch. Further, the application indicated a claim in the sum of \$761.00; an amount that differed from that indicated on the invoice. Therefore, in the absence of adequate verification of the hydro bill costs claimed, I find that this portion of the claim is dismissed.

As the application does not have merit I decline filing fee costs to the landlord.

Residential Tenancy Branch policy suggests that when a landlord applies to retain the deposit, any balance should be ordered returned to the tenant; I find this to be a reasonable stance.

Therefore, as the landlord's claim is dismissed I Order the landlord to return the deposit in the sum of \$750.00 to the tenant, forthwith. I have issued the tenant a monetary Order in the sum of \$750.00.

Conclusion

The landlord's claim is dismissed.

The landlord is ordered to return the deposit to the tenant.

Based on these determinations I grant the tenant a monetary Order for \$750.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia 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: May 15, 2012.

Residential Tenancy Branch