



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNR, MND, MNDC, MNSD and FF
Tenant: MNSD and FF

Introduction

This hearing was convened on applications by both the landlord and the tenant.

By application dated March 8, 2012, the landlord sought a Monetary Order for unpaid rent and utilities, loss of rent, damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

By application of March 28, 2012, the tenant sought return of the security deposit and recovery of the filing fee for this proceeding.

Issue(s) to be Decided

The landlord's application requires a decision on whether the landlord is entitled to a Monetary Order for the claims submitted, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off.

The tenant's application requires a decision on whether the tenant is entitled to return of all or part of the security deposit if it has not been awarded on the landlord's application.

Background and Evidence

This tenancy began on January 1, 2008. Rent was \$1,773.10 per month plus one-half of utilities and the landlord holds a security deposit of \$850 paid on December 5, 2007.

During the hearing, the parties gave evidence that the tenant had vacated the rental unit on February 29, 2012. The landlord stated that the tenant gave only verbal notice to end the tenancy and that it was given in mid-February 2012. The tenant concurred that she had given only verbal notice, but that she had given it on February 1, 2012.

The landlord submitted numerous photographs and an estimate for repainting the rental unit in support of a claim for damages.

The landlord claims and I find as follows:

Rent for February 2012 - \$1,773.10. The parties concurred that the tenant's rent cheque for February 2012 was returned NSF. However, they agreed that the tenant had replaced the cheque. The landlord stated that he had processed the cheque recently but had not yet had verification from his bank that it had gone through. The tenant checked her bank records during the hearing and confirmed that the cheque had cleared successfully.

Therefore, it appears as though the rent for February 2012 was satisfied with one minor exception being that the tenant said she paid \$50 less than the rent because she had an order that allowed her to retain \$50 from the rent. However, the tenant was not able to provide a file number or documentary evidence of her claim. Therefore, I find that she owes the landlord \$50 for the balance of the February rent. If it turns out that the cheque did not clear, then the landlord is at liberty to make a further application for the February rent.

Utilities for January 2012 - \$286.02. As with the February rent, the tenant replaced the NSF cheque which is being processed. Again, if it does not clear, the landlord is at liberty to make further application for the amount, but for the moment, the claim appears to have been satisfied.

Utilities for February 2012 - \$275.07. During the hearing, the landlord revised this estimate to claim the actual \$245.77 billing. The tenant stated she had not paid the February utilities because she had not been advised of the exact amount owed. However, tenant concurs that she owes the \$245.77 and the claim is allowed in full.

Repairs and painting - \$1,500.00. The landlord submitted an estimate in this amount for repainting and repairs to the rental unit. However, this tenancy lasted for four years and the parties concur that the unit was not repainted in that time. Standard depreciation tables place the useful life of interior paint at four years and I find that the paint was fully depreciated. Repainting is, therefore, the responsibility of the landlord. However, photographic evidence submitted by the landlord clearly shows stickers and other markings on the walls that are beyond normal wear and tear. Therefore, I find that the tenant is responsible for \$200 of the cost for patching and preparation for painting.

General cleaning - \$128. The tenant did not contest his claim and it is allowed in full.

Loss of rent for March 2012 - \$1,773.10. Section 45 of the *Act* requires that a tenant's notice to end tenancy must be served on the landlord more than one month in advance of the end of tenancy date set by the notice. In addition, such notice must conform with section 52 of the *Act*, which among other requirements, states that such notice must be in writing. In this matter, I find that the notice was not in writing and was late by both conflicting dates stated by the parties. However, section 7 of the *Act* states that a party making claim for loss or damage, must do whatever is reasonable to minimize the loss. In the present matter, I find that the landlord did anticipate the tenancy would end on February 29, 2012, but has submitted no proof of advertising or other efforts to find a new tenant. As the loss relates to breaches by both parties, I find that they should share equally in the loss of rent for February and I allow the landlord \$886.55 on this claim.

Filing fee - \$100. Having found substantial merit in the landlord's application, I find that he is entitled to recover his filing fee for this proceeding from the tenant.

Security deposit plus interest - (\$863.70). As the award to the landlord exceeds the value of the deposit and interest, and as the landlord lawfully made application to claim on the deposit within 15 days of the end of the tenancy, I find that the landlord shall retain this amount in set off against the balance owed.

As the tenant's application sought only return of the deposit which has been awarded to the landlord, the tenant's application is dismissed without leave to reapply.

Thus, I find that the tenant owes to the landlord an amount calculated as follows:

Rent for February 2012	\$ 50.00
Repairs and painting	200.00
General leaning	128.00
Loss of rent for March 2012	886.55
Filing fee	100.00
Sub total	\$1,639.62
Less retained security deposit	- 850.00
Less interest (December 5, 2007 to date)	- 13.70
TOTAL	\$ 775.92

Conclusion

In addition to authorization to retain the security deposit and interest in set off, the landlord's copy of this decision is accompanied by a Monetary Order for \$775.92, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The tenant's claim for return of the security deposit is dismissed without leave to reapply.

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 10, 2012.

Residential Tenancy Branch