



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD and FF

This application was brought by the landlord on March 22, 2012 seeking a monetary award for unpaid rent, loss of rent, damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security deposits in set off against the balanced owed.

As a matter of note, the respondent is a guarantor on the rental agreement between his daughter together with two other students, and the landlord.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to a monetary award as requested.

Claims in damages require that several factors be taken into account: the comparison of move-in vs. move-out condition inspection reports, whether damages are proven and attributable to the tenants, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable. Damage or loss due to non-compliance with the legislation or rental agreement requires the claimant to take reasonable steps to minimize the loss claimed. The burden of proof falls to the applicant.

Background, Evidence and Analysis

This tenancy initially began on August 1, 2009 under a one-year fixed term rental agreement that required the tenants to vacate on July 31, 2010. The parties signed a new fixed term agreement on July 24, 2010 to run from August 1, 2010 to July 31, 2011. In the agreement in question, rent was \$1,650 per month and the security deposit of \$780 was carried forward from the original agreement.

The respondent in the present matter was a signatory, as guarantor, on both agreements. A guarantor is a party who promises to assume the obligations of the rental agreement if the tenants, the guaranteed parties, fail to do so.

During the hearing, the landlord gave evidence that one of the three tenants vacated the rental unit early and had not paid her \$550 share of the rent for May or June 2011 creating a rent shortfall of \$1,100. Consequently, the landlord served a 10-day Notice to End Tenancy for unpaid rent on June 7, 2012 on the two remaining co-tenants who honoured the notice and left the rental unit before the end of the month.

The landlord submitted copies photographs, cancelled cheques and receipts in support of her claims for damages.

The landlord claims and I find as follows:

Rent shortfall for May and June 2011 - \$1,100. Section 26 of the Act states that rent must be paid when it is due and section 7 of the *Act* provides that a party whose non-compliance with the legislation or rental agreement causes a loss to the other, must compensate the other for the loss. As this was a co-tenancy in which all parties were jointly and severally liable, I find that the guarantor is responsible for the rent shortfall and the claim is allowed in full.

Rent for July 2011 - \$1,650. The guarantor proposes that, as the tenants did not occupy the rental unit in July 2011 and left the tenancy in compliance with the Notice to End Tenancy, the tenants were not obliged to pay rent for the month. However, the Notice to End Tenancy resulted from the tenants' non-compliance with the fixed term agreement. The Notice expressed the tenants' option to extinguish the Notice by paying the rent shortfall within five days or to make application to contest it. Having failed to do either, I find that the tenants breached the fixed term agreement and owe the rent for July 2011, a burden that now falls to the guarantor.

Replace missing kitchen blind - \$55.97. Withdrawn.

Labour to repair bedroom door, light fixture and install blinds - \$120.00. The guarantor question the amount claimed for what appeared to a relatively short job. However, the landlord stated that the supplier charges a minimum of two hours and had to go to Home Depot for supplies after assessing the work. As a matter of note, the landlord stated that the door had not been fixed properly but she absorbed the additional cost. She further noted that the door was broken during the tenancy and the guarantor's daughter could have referred the repair need to him. This claim is allowed in full.

Window washing - \$50. The landlord gave evidence that her total charge for window washing was \$140 and that she claimed only for the portion for the interior. This claim is allowed.

Cleaning supplies - \$7.59. Withdrawn.

General cleaning - \$150. The landlord submitted an itemized invoice in support of this claim and it is allowed in full.

Hauling and cleaning - \$175. This claim was supported by two cheques for \$65 and \$110 and for removal of large items left in the rental unit by the tenants. The claim is allowed.

Water bill - \$98.57. The landlord gave evidence that the remaining water bill exceeded this claim and noted the portions of the rental agreement that made the tenants responsible for the charge. The claim is allowed.

Advertising - \$20.00. Withdrawn.

Key clip - \$5.83. Withdrawn.

Filing fee - \$50. As the application has succeeded on its merits, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenants.

Security damage deposits – (\$780). As authorized by section 72(2)(b) of the *Act*, I order that the landlord retain the deposit in set off against the balance owed.

Thus, I find that the tenants' guarantor owes to the landlord an amount calculated as follows:

Rent shortfall for May and June 2011	\$1,100.00
Labour to repair bedroom door, light fixture and install blinds	120.00
Window washing	50.00
General cleaning	150.00
Hauling and cleaning	175.00
Water bill	98.57
Filing fee	<u>50.00</u>
Sub total	\$3,393.57
Less retained security and pet damage deposits – (\$1,087.50).	<u>- 780.00</u>
TOTAL	\$2,613.57

Conclusion

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order for **\$2,613.57**, enforceable through the Provincial Court of British Columbia, for service on the tenants' guarantor. It is open to the guarantor to bring an action through the court to recover from the tenants.

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