



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 April 13, 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 and pet damage deposits in set off against the balanced owed.

Despite having been served with the Notice of Hearing served by registered mail, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, the hearing proceeded in her absence.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to a Monetary Order as requested and authorization to retain the security and pet damage deposits in deposits in set off.

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 began in December of 2010 and was renewed on May 1, 2011 under a fixed term rental agreement set to end on August 31, 2012. Rent was \$1,100 per month and the landlord holds security and pet damage deposits of \$550 each, paid on January 8, 2010 and February 1, 2012 respectively.

The tenant moved out on April 2, 2012 pursuant to a 10-day Notice to End Tenancy for unpaid sent by registered mail on February 29, 2012 which would have had an effective end of tenancy date of March 15, 2012.

An anomaly in the rent amount resulted in the landlord's application for an Order of Possession and a Monetary Order for unpaid rent, made as a direct request proceeding, being adjourned to a participator hearing by a decision made on March 23, 2012. That reconvened hearing was cancelled by the landlord when the tenant vacated on April 2, 2012. The anomaly resulted when the tenant had asked the landlord for a rent reduction from \$1,100 per month to assist her in returning to school. The rental agreement remained at \$1,100, but the landlord gifted the tenant with the reduction to be effective as long as she was attending school. When the landlord learned that the tenant had not attended school, she advised the tenant that the gifted discount was removed and asked the tenant to resume paying full rent.

In the present application, the landlord has submitted a copy of the rental agreement, NSF cheque, receipts, photographs, move-out condition inspection reports and substantial other documentary evidence.

The landlord claims and I find as follows:

Rent shortfall for February 2012 - \$219.84. On itemizing this claim the landlord stated that it included \$150 of the restored rental rate, the filing fee for the previous direct request proceeding and costs of registered mail. I can make no award for the fee for a previous hearing and preparation costs for a hearing are not claimable. However, I do find that the landlord was entitled to restore the rent to the rate set by the agreement and allow the \$150 portion of this claim.

Rent for March 2012 plus NSF fee - \$1,125. The landlord submitted a copy of the \$950 rent cheque for March 2012 which was returned NSF. As noted, I find that rent was \$1,100 and the landlord is entitled to recover the NSF fee. This claim is allowed in full.

Loss of rent for April 2012 - \$1,885. The landlord had originally requested \$1,885 on this claim but that amount included \$600 paid to a property manager to find a new tenant and estimated utilities costs for the month.

While I accept the agreement with the property manager as proof of the landlord's efforts to minimize her loss as required under section 7(2) of the *Act*, this cost of doing

business is not recoverable. However, I do find that the loss of rent for the month was a result of the tenant overholding beyond the end date set by the notice to end tenancy which prevented the landlord from finding a new tenant for April 2012. I do not allow the utilities portion of the claim, but I do allow \$1,100 for the loss of rent.

Unpaid utilities - \$398.18. The landlord had originally set this amount on existing billings and an estimate to the end of tenancy. However, she has since received billings of \$276.69 and this claim is allowed.

Damages - \$134.40. This claim is based on three sets of drapes missing at the end of the tenancy and is supported by receipts and a copy of an email from the landlord to the tenant asking if they had accidentally been removed and for their return if that was the case. This claim is allowed.

Filing fee - \$62. The landlord included a claim for registered mail in this amount which cannot be recovered. However, as the application has succeeded on its merits, I find that the landlord is entitled to recover the \$50 filing fee for this proceeding from the tenant.

Security and pet damage deposits – (\$1,100). The landlord made application within 15 days of the end of the tenancy as section 38(1) of the *Act* requires. As authorized by section 72(2)(b) of the *Act*, I order that the landlord shall retain the deposits in set off against the balance owed.

Thus, I find that the tenants owe to the landlord an amount calculated as follows:

Rent shortfall for February 2012	\$150.00
Loss of rent for April 2012	1,100.00
Unpaid utilities	276.69
Damages	134.40
Filing fee	<u>50.00</u>
Sub total	\$2,836.09
Less retained security and pet damage deposits – (\$1,087.50).	<u>- 1,100.00</u>
TOTAL	\$1,736.09

Conclusion

In addition to authorization to retain the security and pet damage deposits in set off, the landlord's copy of this decision is accompanied by a Monetary Order for **\$1,736.09**, enforceable through the Provincial Court of British Columbia, for service on 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: June 08, 2012.

Residential Tenancy Branch