



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution. At the hearing the Landlord withdrew the claim to retain the security deposit, as the Landlord had been given authorization to retain the deposit at a previous proceeding.

At the outset of the hearing the male Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the rental unit, although he could not recall the date these documents were sent. The female Landlord stated that she believed the Canada Post receipt for this package was at home. The hearing was adjourned for twenty minutes to provide the Landlord with the opportunity to retrieve the receipt from their home.

When the hearing was reconvened at 1:20 p.m. the female Landlord stated that the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant at the rental unit, via registered mail, on April 03, 2012. The female Landlord cited a tracking number that corroborates that statement. She stated that the Canada Post website shows this package was delivered to the Tenant on April 04, 2012. On the basis of this testimony and in the absence of evidence to the contrary, I find that these documents were served on the Tenant.

The female Landlord stated that a package of evidence was mailed to the Tenant at the rental unit, via registered mail, on May 29, 2012. Canada Post documentation was submitted in evidence that corroborates this testimony. On the basis of this testimony and in the absence of evidence to the contrary, I find that a package of evidence was served to the Tenant.

The package of evidence that was served on May 29, 2012 included a monetary order worksheet that shows the Landlord is seeking compensation in the amount of \$9,456.15 and \$1,939.18. The Landlord acknowledged that it did not amend the amount of the monetary claim on the Application for Dispute Resolution, which is only \$2,275.00.

The Landlord was advised that I would not amend the Landlord's Application for Dispute Resolution to increase the amount of the monetary claim, as the Landlord did not amend the Application for Dispute Resolution in accordance with Rule 2.5 of the Residential Tenancy Branch Rules of Procedure. Rule 2.5 stipulates that a copy of the amended application must be submitted to the Residential Tenancy Branch and must be served on the other party. In this case the Landlord did not submit an amended Application for Dispute Resolution to the Residential Tenancy Branch nor did the Landlord serve one on the Tenant.

While I accept that the Landlord did serve the Tenant with a monetary order worksheet that shows the Landlord is claiming compensation in the amount of \$9,456.15 and \$1,939.18, I find that this document does not replace the need to actually amend the Application for Dispute Resolution. In my view, documentation that is included in a package of evidence is not sufficient notice that a landlord is increasing the total amount of a monetary claim as it does not clearly and unequivocally inform the Tenant of the change in the amount of the total claim.

The Landlord was given the option of withdrawing the Application for Dispute Resolution and filing a new Application for Dispute Resolution to include all of the claims outlined on the monetary order worksheet or to proceed today with the original claim for \$2,275.00. The male Landlord stated that they wished to proceed with the original claim for \$2,275.00.

The Landlord's application to amend the Application for Dispute Resolution to include a claim for all rent that is currently due was granted. As the Landlord's original Application for Dispute Resolution clearly specified that the Landlord was seeking compensation for unpaid rent, I find it reasonable for the Tenant to assume that the Landlord would be seeking all rent that is due, including rent that became due after the Application for Dispute Resolution was filed.

I specifically note, however, that the Landlord is not granted leave to seek compensation for loss of revenue arising from the condition of the rental unit, as the Landlord did not make a claim for loss of revenue on the Application for Dispute Resolution.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for unpaid rent; to compensation for damage to the rental unit; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The male Landlord stated that this tenancy began on February 01, 2012 and that the rent of \$1,400.00 was due by the first day of each month.

The male Landlord stated that the Landlord was granted an Order of Possession for the rental unit on May 24, 2012, which required the Tenant to vacate the rental unit two days after the Order was served upon him; that the Order of Possession was posted on the door on May 24, 2012; and that the Tenant vacated the rental unit on June 08, 2012.

The male Landlord stated that the Landlord was granted a monetary Order for unpaid rent for May of 2012 at a previous dispute resolution proceeding. The Landlord is now seeking compensation for unpaid rent from June of 2012.

The Landlord is seeking compensation, in the amount of \$600.00, for replacing the dishwasher in the rental unit. The male Landlord stated that the Tenant broke one of the attachments used to distribute water inside the machine; that the attachment was torn off of the dishwasher; and that one of the racks was missing from the dishwasher. The Landlord submitted a receipt to show that a new dishwasher was purchased for \$655.19.

The Landlord is seeking compensation, in the amount of \$50.00, for repairing the front door which was damaged by the Tenant's dog. The Landlord submitted no documentary evidence to corroborate the Landlord's claim that it will cost \$50.00 to repair the door.

The Landlord is seeking compensation, in the amount of \$100.00, for changing the locks in the rental unit and for replacing keys to the unit/complex. The female Landlord stated that the Tenant changed the locks during the tenancy; he did not provide the Landlord with keys to the new locks; and he did not return any of the keys to the unit/complex. The Landlord submitted no documentary evidence to corroborate the Landlord's claim that it will cost \$100.00 to replace the keys to the unit/complex.

The Landlord is seeking compensation, in the amount of \$75.00, for cleaning the carpets. The female Landlord stated that the carpets were soiled; that they originally intended to clean the carpets; but they have subsequently determined that the carpets will need replacing rather than cleaning. The Landlord submitted no documentary evidence to corroborate the Landlord's claim that it will cost \$75.00 to clean the carpet.

Analysis

On the basis of the evidence presented by the Landlord and in the absence of evidence to the contrary, I find that the Tenant was obligated to pay monthly rent of \$1,400.00 and that an Order of Possession that required the Tenant to vacate the rental unit two days after the Order was served upon him was posted on the door of the rental unit on May 24, 2012.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received

the Order of Possession on May 27, 2012 and that he was required to vacate the rental unit on the basis of that Order by May 29, 2012.

As the Tenant did not vacate the rental unit by May 29, 2012, I find that he is obligated to pay rent, on a per diem basis, for the days he remained in possession of the rental unit. As he has already been ordered to pay rent for the month of May, I find that the Landlord has been duly compensated for that period. I also find that the Tenant must compensate the Landlord for the eight days in June that he remained in possession of the rental unit, at a daily rate of \$46.66, which equates to \$373.28.

As I have declined to consider the Landlord's application for compensation for loss of revenue, the Landlord retains the right to file another Application for Dispute Resolution seeking compensation for lost revenue.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that the Tenant failed to comply with section 37(2) of the *Act* when he damaged, and failed to repair, the dishwasher. I therefore find that the Landlord is entitled to compensation for damages that flow from the Tenant's failure to comply with the *Act*. As the Landlord has submitted evidence to show that the Landlord paid more than \$600.00 to replace the dishwasher, I find that the Landlord has proven the claim of \$600.00.

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that the Tenant damaged the front door. In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant, whenever compensation for damages is being claimed. In these circumstances, I find that the Landlord failed to establish the true cost of repairing the door. In reaching this conclusion, I was strongly influenced by the absence of any independent documentary evidence that corroborates the Landlord's claim that it will cost \$50.00 or more to repair the door. On this basis, I award nominal damages in the amount of \$1.00.

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that the Tenant changed the locks to the rental unit; that he did not provide the Landlord with keys to the locks; and that he did not return keys to the rental unit/complex at the end of the tenancy. In these circumstances, I find that the Landlord failed to establish the true cost of replacing the keys to the unit/complex. In reaching this conclusion, I was strongly influenced by the absence of any independent documentary evidence that corroborates the Landlord's claim that it will cost \$100.00 or

more to replace the missing keys and to rekey the lock. On this basis, I award nominal damages in the amount of \$1.00.

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that the Tenant did not leave the carpets in reasonably clean condition at the end of the tenancy and that the Landlord is entitled to compensation for cleaning the carpet. In these circumstances, the Landlord has elected not to clean the carpet and I therefore cannot award compensation for cleaning. I specifically note that I cannot award compensation for replacing the carpet as the Landlord did not make that claim in the Application for Dispute Resolution.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,025.28, which is comprised of \$373.28 in unpaid rent, \$600.00 in damages, \$2.00 in nominal damages, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for the amount of \$1,025.28. 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.

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 11, 2012.

Residential Tenancy Branch