



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND; MNR; MNDC, MNSD; FF

Introduction

This is the Landlord's application for a Monetary Order for damages to the rental unit, unpaid rent and loss of revenue; to retain the security deposit in partial satisfaction of its monetary claim; and to recover the cost of the filing fee from the Tenants.

The Landlord gave affirmed testimony at the Hearing.

The Landlord testified that the Notice of Hearing documents were mailed to each of the Tenants, via registered mail, to the forwarding address provided by the Tenant JM on April 16, 2012. The Landlord provided a copy of the Tenant's written notification of her forwarding address and copies of the registered mail receipts and tracking numbers.

Based on the Landlord's affirmed testimony and documentary evidence, I am satisfied that the Tenants were duly served with the Notice of Hearing documents by registered mail. Service in this manner is deemed to be effected 5 days after mailing the documents. Despite being served with the Notice of Hearing documents, the Tenants did not sign into the teleconference and the Hearing proceeded in their absence.

Preliminary Matter

The Landlord's Application included a request that he could serve documents in a different way than required by the Act. The Landlord stated that he was withdrawing that portion of his application, as he was able to serve the Tenants in accordance with the provisions of the Act and therefore it was no longer an issue.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order pursuant to the provisions of Section 67 of the Act?
- May the Landlord apply the security deposit towards his monetary award?

Background and Evidence

The Landlord gave the following testimony:

Monthly rent was \$1,227.00, due the first day of each month. The Tenants paid a

security deposit in the amount of \$600.00 on August 1, 2010. Rent did not include utilities. The Tenants were responsible for paying 2/3 of the hydro bills, such payment was due the last day of each month. The rental unit is the upper floor of a building. The Landlord resides on the lower floor.

The Landlord was successful in a previous Application for Dispute Resolution on February 1, 2012, and was provided an Order of Possession for the rental unit. The Landlord testified that the Tenants moved out of the rental unit on February 16, 2012, without telling the Landlord. The Tenants left the keys to the rental unit in the mail box. The Landlord stated that there was no move out condition inspection performed because the Tenants did not provide contact information until after his new tenants moved into the rental unit. The Landlord stated that he re-rented the rental unit effective April 1, 2012. The Landlord did not seek to recover his loss of revenue for the month of March, 2012.

The Landlord testified that the Tenants damaged a shelf under a tap; left garbage at the rental unit; and broke a smoke detector. The Landlord stated that he wished to amend his claim with respect to the cost of removing the garbage and replacing the smoke detector. He stated that he included some of his garbage with the Tenants and that he purchased the new smoke detector at a “two for one” sale. Therefore, he seeks to amend his claim to reflect half the cost of the garbage removal and the smoke detector purchase.

The Landlord submitted that the Tenants had pets and they damaged the carpets in the rental unit. The Landlord has replaced the carpet, which was approximately 10 years old. The Landlord stated that he also had to replace a blind on the kitchen window and a metal towel hanger in the bathroom (which he got second-hand at a garage sale). The Landlord also seeks compensation for his labour for clean-up and repair at the rental unit. He testified that he spent more than 3 hours doing so, but is only seeking \$30.00 for his labour.

The Landlord seeks a total monetary award of \$1,914.20, calculated as follows:

Loss of revenue for February, 2012	\$1,227.00
Tenants' share of hydro for Jan 1 – Feb 13, 2012 (copies of bills provided)	\$245.22
Cost to replace bottom shelf under tap (estimate \$125.00 plus HST)	\$140.00
Cost for garbage removal (receipt provided)	\$45.00
Cost to replace broken smoke detector (receipt provided)	\$13.65
Cost to replace window blind (receipt provided)	\$16.80
Cost to replace broken towel hanger (purchased second hand)	\$10.00
Estimated cost to repair carpet (carpet was replaced)	\$150.00

Landlord's labour	<u>\$30.00</u>
TOTAL CLAIM	\$1,877.67

Analysis

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenants pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I accept the Landlord's undisputed testimony that the Tenants moved out of the rental unit on February 16, 2012, without advising the Landlord of their forwarding address. I accept the Landlord's undisputed testimony that he did not receive a forwarding address for the Tenants until after his new tenants moved into the rental unit on April 1, 2012. I find that the Landlord has established his claim in the amount of **\$1,227.00** for loss of revenue for the month of February, 2012.

I accept the Landlord's undisputed testimony that the Tenants did not pay their share of the hydro bill from January 1 to February 13, 2012. The Landlord provided a copy of the bill and his calculation of the Tenant's share. I find that the Landlord has established his claim in the amount of **\$245.22** for unpaid utilities.

I accept the Landlord's undisputed testimony that the Tenants left garbage at the rental unit and that he had to attend to its removal. I find his claim in the amount of \$45.00 for the cost of hiring someone to dispose of the garbage and his claim in the amount of \$30.00 for his labour is reasonable and I allow this portion of his claim in the total amount of **\$75.00**.

I find that the Landlord has not provided sufficient evidence to support the remainder of his claim for the following reasons:

1. Building materials have a useful life. Residential Tenancy Policy Guideline 40 sets out the useful life of commonly used building materials. For example, carpet has a useful life of 10 years. The Landlord stated that the carpet in the rental unit was approximately 10 years old and was replaced. I find that the carpet was due to be replaced in any event, and therefore the Landlord is not entitled to recover a cost for repairing it.
2. The Landlord did not provide evidence of the age of the shelf, smoke detector, kitchen blind or metal towel hanger. There was insufficient evidence that they were damaged as a result of abuse or neglect on the Tenants' part.

Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of his monetary award. No interest has accrued on the security deposit.

The Landlord's application had merit and I find that he is entitled to recover the cost of the \$50.00 filing fee from the Tenants.

I hereby provide the Landlord a Monetary Order against the Tenants, calculated as follows:

Loss of revenue for February, 2012	\$1,227.00
Unpaid utilities	\$245.22
Landlord's labour and cost of disposing of Tenant's garbage	\$75.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,597.22
Less security deposit	<u>- \$600.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$997.22

Conclusion

I hereby provide the Landlord a Monetary Order in the amount of **\$997.22** against the Tenants. This Order must be served on the Tenants and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

Dated: June 21, 2012.

Residential Tenancy Branch