



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MND, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"), seeking a monetary order for unpaid rent and money owed or compensation for damage or loss and for damage to the rental unit, for authority to retain the tenant's security deposit and for recovery of the filing fee.

The landlord and his interpreter appeared. Out of an abundance of caution, the interpreter was affirmed into the hearing. The landlord's testimony was through his interpreter.

The landlord testified that he served the tenant with the Application for Dispute Resolution and Notice of Hearing (the "Hearing Package") by registered mail on May 8, 2012. The landlord supplied evidence of the tracking number of the registered mail.

When questioned, the landlord testified that the address used for service of the Hearing Package was the forwarding address supplied by the tenant to the landlord in a text message.

I find the tenant was served in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present his evidence orally and in documentary form.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order, for authority to retain the tenant's security deposit and to recover the filing fee?

Background and Evidence

The landlord stated that he submitted a copy of the written tenancy agreement for evidence; however there was no copy contained in the file. The landlord testified that

this tenancy began December 15, 2011, ended on May 2, 2012 when the tenant vacated the rental unit without notice, monthly rent was \$1088.00, and that the tenant paid a security deposit of \$544.00 on December 9, 2011.

The landlord stated that the tenant was required under the tenancy agreement to pay 40% of the utilities for the residential property, as the tenant lived in the lower level.

The landlord's monetary claim is \$2539.22, which includes unpaid rent for March and April 2012, in the amount of \$2176.00 and unpaid utilities of \$363.22.

The landlord stated that the tenant paid rent in March and April with a cheque, and both cheques were dishonoured by the tenant's bank. To date, the landlord has not received rent for those months.

Additionally, the landlord stated that he submitted the utility bills to the tenant, but that the tenant failed to pay.

The landlord's relevant evidence included utility bills and copies of the dishonoured cheques.

Analysis

Based on the testimony, evidence, and a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for When making a claim for damages under a tenancy agreement or the Act, the party making the allegations, the landlords in this case, has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Under section 26 of the Act, the tenant was required to pay rent in accordance with the terms of the tenancy agreement and not permitted to withhold rent without the legal right to do so.

I find the tenant was obligated to pay rent in March and April 2012 and that he failed to do so when his rent cheques were dishonoured.

I therefore find the landlord has established his monetary claim for \$2176.00.

I accept the landlord's undisputed testimony that the tenant was obligated to pay 40% of the utility bills and that he failed to do so. The landlord supplied evidence of the bills and I therefore find that he has established his monetary claim of \$363.22.

Due to his successful application, I find that the landlord is entitled to recover the filing fee of \$50.00.

Conclusion

I find that the landlord has established a monetary claim of \$2589.22, comprised of unpaid rent for March and April 2012 in the amount of \$2176.00, unpaid utilities in the amount of \$363.22 and the filing fee of \$50.00.

At the landlord's request, I allow the landlord to retain the tenant's security deposit of \$544.00 in partial satisfaction of his monetary claim and I grant the landlord a monetary order for the balance due in the amount of \$2045.22 and enclose the monetary order with the landlord's Decision. This order is a legally binding, final order, and it may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement should the tenant fail to comply with this monetary order.

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: July 05, 2012.

Residential Tenancy Branch