



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF O

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlord applied for a monetary order for unpaid rent, for damage to the unit, site or property, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the *Act*, and to recover the filing fee.

The parties appeared at the teleconference hearing and gave affirmed testimony. During the hearing both parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary Matters

The tenant stated that he did not receive the evidence package from the landlord. The landlord confirmed during the hearing that she did not serve the tenant with her evidence package. As a result, and in the interests of administrative fairness, the evidence from the landlord was not considered. The landlord was advised, however, that she could present oral testimony during the hearing as an alternative.

The evidence package from the tenant was served late and not in accordance with the rules of procedure. As a result, and in the interests of administrative fairness, the evidence from the tenant was also not considered. The tenant was advised that he could present oral testimony during the hearing as an alternative.

The landlord made reference to a prior dispute resolution hearing regarding this tenancy in June, 2012. That decision, the subsequent correction to that decision, and the subsequent review of that decision, which was ultimately dismissed, were reviewed. The review of that decision also confirmed that the original decision and orders made on June 20, 2012 stand. The landlord was ordered to return double the remaining security deposit for a total of \$700.00 to the tenant. During this hearing, the landlord testified that

she has not paid the tenant as she wanted to wait for the results of this decision as the amounts may cancel each other out.

Given the above, I do not have jurisdiction to hear the landlord's application to keep all or part of the security deposit as that matter has already been decided upon by a prior DRO.

I have reviewed all the 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.

Issues to be Decided

- Should the landlord be granted a monetary order for unpaid rent, for damage to the unit, site or property, or for money owed or compensation for damage or loss under the *Act*?
- Should the landlord recover the filing fee?

Background and Evidence

Details of the written tenancy agreement were provided orally during the hearing. The written agreement indicates that the start date of the month to month tenancy was April 17, 2011. Rent in the amount of \$1,400.00 was due on the first day of each month.

The parties agreed that the tenancy ended on April 8, 2012. The landlord has submitted a monetary claim for \$3,420.00 consisting of the following, which actually totals \$3,780.00:

Remainder of April 2012 rent	\$700.00
Strata move-in fee for April 2011	\$150.00
Fee for tenant moving in belongings early prior to tenancy start date (April 9-16, 2011)	\$350.00
Additional rent for second person living in suite without landlord's permission	\$1,000.00
Cost of new grills for the gas range	\$171.00
Drywall mud, knife, sander and fuel to purchase supplies	\$30.00
Cost of tool need to repair screen door	\$9.00
Time accrued to date and anticipated time and stress involved with previous RTB file and in filing and preparing for current application (3 hours of consoling and helping tenant and girlfriend, plus 20 hours to date and anticipated 10	\$1,320.00

additional hours at \$40 per hour = \$1,320.00)	
Filing fee	\$50.00
TOTAL	\$3,780.00

The landlord testified that she permitted the tenant to pay only \$700.00 rent for the month of April 2012 as a generous offer. She also affirmed that she withdrew her offer after the previous dispute resolution hearing stating that she was upset afterwards.

The landlord stated that the \$350.00 fee she was claiming for is for when the tenant moved in items prior to the tenancy starting. The tenant was asked if that fee was discussed, and the tenant disputed that such a fee was ever discussed. The landlord stated that she did not recall asking the tenant for the fee before he moved the items in early, but does recall asking the tenant for the fee before April 17, 2011.

The landlord stated that although she paid the \$150.00 strata move in fee at the start of the tenancy, and sought compensation for that fee, it was not part of the written tenancy agreement. The landlord also is requesting \$1,000.00 as the tenant resided with his wife, and that she did not approve another tenant in the rental unit. The tenant disputed this extra fee.

The landlord stated that there were additional expenses that arose since the previous decision that affected her loss in relation to the gas grills. The landlord is seeking an additional \$171.00 for the extra costs to purchase new gas grills for the gas range.

Analysis

Based on the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Remainder of April 2012 rent – The landlord testified that she advised the tenant prior to April 30, 2012 that he did not have to pay the remaining \$700.00 rent for the month of April, 2012. Although the landlord confirmed that she changed her mind on her generous offer after the previous dispute resolution hearing as she was upset, **I find** the landlord may not withdraw her waiver of the remaining rent after the fact. Once the landlord advised the tenant that he did not have to pay the remaining rent, the landlord thereby waives her claim towards that unpaid rent. Therefore, **I dismiss** this portion of the landlord's claim without leave to reapply.

Strata move-in fee for April 2011 – The landlord testified that the strata move-in fee of \$150.00 was paid by the landlord at the start of the tenancy. The written tenancy agreement did not include the cost of the strata move-in fee and may not be added after the fact. Any associated fees relating to the tenancy must be agreed upon and included in the written tenancy agreement or related addendum(s). Therefore, **I dismiss** this portion of the landlord's claim without leave to reapply due to insufficient evidence to support the claim.

Fee for tenant moving in belongings prior to the start of the tenancy – The landlord has claimed \$350.00 to compensate her for the cost of the tenant moving in his belongings prior to the start of the tenancy between the dates of April 9 to 16, 2012. The landlord failed to provide anything in writing indicating a \$350.00 fee was agreed upon prior to the start of the tenancy for the tenant to move in his belongings early. The tenant disputed the landlord's testimony that the landlord had specified a fee for moving in belongings prior to the start date of the tenancy. Therefore, **I dismiss** this portion of the landlord's claim without leave to reapply due to insufficient evidence to support this claim.

Additional rent for second person living in rental unit – The landlord stated that she crossed out the area on the last page of the tenancy agreement where a second tenant would sign. The landlord affirms that by crossing out that area on the agreement, it confirms there were no other tenants permitted in the rental unit. The landlord is required to specify terms at the start of the tenancy with respect to an increase in rent for additional occupants, and without such a term, the term is unenforceable when the term is disputed. The tenant disputes that there were any additional fees agreed upon for additional tenants. Therefore, due to insufficient evidence, **I dismiss** this portion of the landlord's claim without leave to reapply.

Cost of new grills, drywall supplies, fuel, tools, time accrued and stress involved applying for arbitration - The landlord provided insufficient evidence to support any of these claims. To prove such a claim, the landlord could have supplied photos of any alleged damage, quotes to repair any alleged damage, receipts for work completed to repair any damages, and served the evidence in accordance with the rules of procedure. In addition, the *Act* does not provide a remedy to compensate for the applicant's time or stress involved with making an application under the *Act*. Therefore, **I dismiss** this portion of the landlord's claim without leave to reapply due to insufficient evidence.

As the landlord was not successful in her application, I **do not** grant the recovery of the filing fee.

Conclusion

I do not have jurisdiction to hear the landlord's application to keep all or part of the security deposit as that matter has already been decided upon by a prior DRO.

I dismiss the other claims of the landlord in their entirety without leave to reapply due to insufficient evidence.

I do not grant the recovery of the filing fee.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: August 28, 2012

Residential Tenancy Branch