



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.

The Landlord and the female Tenant were represented at the hearing on September 24, 2012.

The Agent for the Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, and a package of evidence was sent to each Tenant, via registered mail, at the service address listed for them on the Application for Dispute Resolution. The Landlord submitted copies of Canada Post receipts that corroborate this testimony. The Agent for the Landlord stated that the Canada Post website indicates that Notices of Delivery were sent to the Tenants on July 17, 2012 and July 23, 2012 by Canada Post. She stated that the packages were unclaimed and were returned to the Landlord by Canada Post.

The female Tenant stated that she resides at the service address listed for them on the Application for Dispute Resolution but that neither she nor her husband received notice from Canada Post regarding the aforementioned registered mail. She stated she was on holidays between July 22, 2012 and July 29, 2012 and August 10, 2012 and September 05, 2012. She stated that on September 20, 2012 another agent for the Landlord informed her, via email, that the Landlord had initiated a dispute resolution proceeding. She stated that she contacted the Residential Tenancy Branch and was provided with the pass code and telephone needed to dial into this teleconference.

The female Tenant requested an adjournment to provide her and her husband with the opportunity to view and respond to the claims made by the Landlord. The Agent for the Landlord argued that the Landlord has properly served the hearing documents to the Tenant and she strongly opposed the adjournment.

On the basis of the information submitted in evidence, I find that the Landlord has served both Tenants with the Application for Dispute Resolution and the Notice of Hearing in accordance with section 89(1)(d) of the *Act*. The evidence clearly shows,

however, that those documents were not received by either Tenant. In the interests of procedural fairness, particularly the right to be heard, and the right to be fully informed of the claims being made, I find that it would be appropriate in these circumstances to adjourn this matter. In reaching this conclusion I was influenced by the possibility that Canada Post may have delivered the Notices of Delivery to the wrong address or that the Tenant inadvertently overlooked the Notices of Delivery. In my view it would be inappropriate to proceed in this matter without giving the Tenant a reasonable opportunity to prepare a response to the claims. The Agent for the Landlord was advised that the matter was being adjourned for the purposes of providing the Landlord with the opportunity to re-serve the Application for Dispute Resolution, the Notice of Hearing, and the hearing package.

In determining that it was appropriate to adjourn this matter I was heavily influenced by the fact that the Landlord is only seeking a monetary Order and should not, therefore, be unduly disadvantaged by a short delay. I was further influenced by the presence of the Tenant at the original hearing, which causes me to conclude that she is interested in disputing the Landlord's claims.

The Landlord and the Tenant were both represented at the reconvened hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

TENAT File cross app????

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for unpaid rent/loss of revenue; to compensation for damage to the rental unit; to retain all or part of the security deposit paid by the Tenant; and to recover the filing fee for the cost of this Application for Dispute Resolution.

TT app?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on December 15, 2010; that the Tenant was required to pay rent of \$2,500.00 by the first day of each month; and that the Tenant paid a security deposit of \$1,250.00.

The Landlord is seeking compensation for loss of revenue from July of 2012, in the amount of \$2,500.00. The Landlord and the Tenant agree that .

The Landlord is seeking compensation, in the amount of \$578.92, for cleaning the carpet. An addendum to the tenancy agreement, which was submitted in

evidence, stipulates that the carpet must be professionally cleaned at the end of the tenancy if they were steam cleaned at the start of the tenancy.

The Landlord is seeking compensation, in the amount of \$112.00, for mowing the lawn at the end of the tenancy.

Analysis

Loss of revenue Lawn

On the basis of the undisputed evidence presented at the hearing, I find that the tenancy agreement required to the Tenant to have the carpets professionally steam cleaned at the end of the tenancy, and that the Tenant did not comply with this term of the tenancy agreement. I therefore find that the Landlord is entitled to compensation for the cost of steam cleaning the carpet.

In the absence of evidence to support the argument that the estimate for repairing the stair railing provided by the Landlord is unreasonable, I find that the estimate is reasonable. I find that the Tenant failed to comply with section 37(2) of the *Act* when they failed to repair the railing at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*, which in these circumstances is \$90.00 to repair the stair railing.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$387.00, which is comprised on \$337.00 in unpaid rent 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 \$102.88. 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: September 24, 2012.

Residential Tenancy Branch