



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MND, MNDC, FF

Introduction

This hearing concerns the landlord's application for a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee. The landlord's agent participated in the hearing and gave affirmed testimony. Despite service of the application for dispute resolution and notice of hearing (the "hearing package") by way of registered mail, the tenant did not appear. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the item was "successfully delivered."

A previous hearing concerning this tenancy was held on June 11, 2012, arising from which a decision was issued on June 12, 2012. Pursuant to the decision an order of possession and a monetary order were issued in favour of the landlord.

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the year-long fixed term of tenancy was from September 1, 2011 to August 31, 2012. Monthly rent of \$6,000.00 was due and payable in advance on the first day of each month. A security deposit of \$3,000.00 and a pet damage deposit of \$3,000.00 were both collected. A move-in condition inspection report was completed with the participation of both parties.

Tenancy ended on June 30, 2012 following the landlord's issuance of a 10 day notice to end tenancy. A move-out condition inspection report was completed with the participation of both parties. The unit was re-rented effective July 1, 2012, with a monthly rent of \$5,000.00, which is \$1,000.00 less per month than the amount agreed to with the tenant who is the respondent in this dispute.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord's agent, the various aspects of the application and my findings around each are set out below. The landlord's agent testified that the tenant agreed to certain aspects of the landlord's claim by way of his signature on the move-out condition inspection report.

\$145.85: pool maintenance. I note that the tenancy agreement provides that "pool maintenance" is included in the rent. There is otherwise no provision in the tenancy agreement which speaks to the tenant's responsibility for any chemicals. In the result, this aspect of the application is hereby dismissed.

\$1,100.00: water utilities. Arising from the landlord's agent's testimony and further consideration of the relevant documentary evidence during the hearing, I find that the landlord has established entitlement limited to \$1,005.00*.

\$100.00: fee assessed for late payment of rent for March & April 2012. The tenancy agreement provides that a fee in the amount of \$25.00 will be assessed for late payment of rent. The landlord's agent testified that the fee in this case has been assessed for March & April 2012. Accordingly, I find that the landlord has established entitlement limited to \$50.00* (2 x \$25.00).

\$150.00: arbitration cost. The landlord's agent testified that this aspect of the claim appears to have been included in the application in error. In the result, I consider this aspect of the application to be withdrawn.

\$100.00*: carpet repairs. Arising from the tenant's agreement to the landlord's claim for this cost pursuant to his signature on the move-out condition inspection report, I find that the landlord has established entitlement to the full amount claimed.

\$175.00*: carpet cleaning. For reasons identical to those set out immediately above, I find that the landlord has established entitlement to the full amount claimed.

\$2,000.00*: rent differential for July & August 2012 (2 x \$1,000.00). Residential Tenancy Policy Guideline # 3 addresses "Claims for Rent and Damages for Loss of Rent," and provides in part:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for during the balance of the un-expired term of the tenancy.

I find that as the level of monthly rent agreed to in the newly established tenancy was \$1,000.00 less, the landlord has established entitlement to the full amount claimed.

\$2,800.00: fees associated with re-renting the unit. Residential Tenancy Policy Guideline # 4 addresses "Liquidated Damages." I note that while the tenancy agreement includes a "Leasebreach" clause, which speaks broadly to the assessment of costs in the event "the tenant vacates prior to expiration of Lease," there is no particular amount specified. However, I also note the tenant's agreement to the assessment of such a fee by way of his signature on the move-out condition inspection report. The report quantifies the fee as \$2,500.00 plus HST, the specific amount of which is not calculated. Following from all of the foregoing, I find that the landlord has established entitlement limited to **\$2,500.00***.

\$100.00*: filing fee. As the landlord has achieved a measure of success with this application I find that the landlord has established entitlement to recovery of the full fee.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$5,930.00**. Should it be necessary, this order may be served on the tenant, filed in the 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 17, 2012.

Residential Tenancy Branch