



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND; MNDC; MNSD; FF

Introduction

This is the Landlord's application for a Monetary Order for damages and loss of revenue; to apply the security deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenant.

The Landlord testified that he served the Tenant with the Notice of Hearing documents and a copy of his "Moving Out Damage Report" by registered mail sent June 13, 2012. The Tenant's agent acknowledged receipt of the documents.

The Tenant's agent testified that the Tenant mailed copies of her documentary evidence to the Landlord, by regular mail, on August 9, 2012. The Landlord stated that he did not receive any documentary evidence from the Tenant. The Tenant's agent was advised that he could provide verbal testimony with respect to the contents of the Tenant's written submissions.

The Landlord testified that he provided the Residential Tenancy Branch with copies of receipts by mail sent September 5, 2012. He stated that he also taped copies of the receipts to the Tenant's door at her new residence on September 5, 2012. The Tenant's agent stated that he did not receive any copies of receipts. The Landlord did not have a witness to corroborate his statement with respect to service. I advised that Landlord and the Tenant that the Residential Tenancy Branch does not have copies of the Landlord's receipts, in documentary form on the file or in our electronic filing system.

The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

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

Issues to be Decided

- Is the Landlord entitled to compensation in the amount of \$890.00 for loss of revenue from July 1 to July 8, 2012, for the cost of cleaning the rental unit, and for the cost of replacing hardwood flooring in the rental unit?
- May the Landlord deduct his monetary award from the security deposit?

Background and Evidence

This tenancy began on May 15, 2012. Monthly rent was \$1,150.00, due on the first day of each month. The Tenant paid the Landlord \$1,150.00 at the beginning of the tenancy, which comprised half a month's rent and a security deposit in the amount of \$575.00.

On or about June 15, 2012, the Tenant told the Landlord that she was ending the tenancy at the end of June, 2012. The Tenant's agent stated that the Landlord agreed that he would try to re-rent the rental unit for July 1, 2012, and return the security deposit.

The Landlord stated that the Tenant did not give him due notice to end the tenancy and that he did not agree that the Tenant could end the tenancy early. The Landlord stated that he was able to re-rent the rental unit but that the new occupants were not able to move in until July 8, 2012, because the Tenant had not cleaned the rental unit and there were damages. The Landlord testified that the new occupants paid prorated rent in the amount of \$800.00 for the month of July, 2012. The Landlord seeks compensation for loss of revenue in the amount of \$350.00.

The Landlord stated that he had to pay a cleaning person to wash walls, clean the oven and fridge and generally clean the rental unit. The Landlord testified that the rental unit was renovated immediately before the Tenant moved in, including new wood floors, counters, fridge and stove. He stated that the Tenant drilled holes into the new floor to accommodate wires without the Landlord's knowledge or consent. The Landlord stated that the balance of his claim in the amount of \$540.00 (after deducting his \$350.00 reward for loss of revenue) does not cover the cost of cleaning the rental unit and repairing the wood floors.

The Tenant's agent testified that the Tenant moved out of the rental unit at the beginning of July and returned on July 3rd to finish cleaning, but there were already new occupants in the rental unit. He stated that the rental unit was in good condition when the Tenant moved in, but that the floors were not properly installed. The Tenant

acknowledged putting three holes in the floor, but said that they were very small holes and that they were barely noticeable.

The Landlord stated that the new occupants moved their furniture into the rental unit on July 3, 2012, but did not live there until July 8, 2012.

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 its claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenant 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 Tenant 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 find that the Tenant did not provide notice to end tenancy that complies with the requirements of Section 45 or 52 of the Act and that the Landlord suffered a loss as a result. The Landlord did not provide documentary evidence of the amount the new occupants paid in rent, however I accept the Landlord's affirmed testimony that the new occupants' tenancy began on July 8, 2012, and award the Landlord the sum of **\$259.70** for loss of revenue, calculated as follows:

$$\begin{aligned} \$1,150.00 / 31 \text{ days} &= \$37.10 \text{ per day} \\ \$37.10 \times 7 \text{ days (July 1 - 7 inclusive)} &= \$259.70 \end{aligned}$$

There was no Condition Inspection performed, that complies with the requirements of Part 3 of the Residential Tenancy Regulation, at the beginning or the end of the tenancy. Section 21 of the Regulation states that a condition inspection report completed in accordance with the provisions of part 3 of the Regulation is evidence of the state or repair and condition of the rental unit on the date of the inspection, unless either party has a preponderance of evidence to the contrary.

In this case, the Tenant's agent testified that the Tenant returned to the rental unit on July 3, 2012, to "finish cleaning" and therefore I find that the Tenant did not leave the rental unit in a reasonable clean condition at the end of the tenancy. In addition, the Tenant's agent confirmed that the Tenant drilled three holes into the wood floor.

The Landlord did not provide copies of the receipts for the cleaning services or any documentary evidence with respect to the cost of repairing the floors. Residential Tenancy Guideline 16 provides, "An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where..... no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right."

Section 37 of the Act requires a tenant to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. I find that the Tenant did not comply with Section 37 of the Act and that the Landlord is entitled to a nominal award in the amount of \$50.00 for cleaning the rental unit and an additional \$50.00 for the cost of repairing the floors, for a total of **\$100.00**.

The Landlord has been partially successful in his application and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

I find that the Landlord has established a monetary award, calculated as follows:

Loss of revenue	\$259.70
Nominal award for the cost of cleaning the rental unit	\$50.00
Nominal award for the cost of repairing the floor	\$50.00
Recovery of the filing fee	<u>\$50.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$409.70

Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlord may apply a portion of the security deposit in satisfaction of his monetary award. I Order that the Landlord return the balance of the security deposit in the amount of **\$165.30** to the Tenant.

Conclusion

The Landlord has established a monetary award in the amount of **\$409.70**, which he may deduct from the security deposit.

I hereby provide the Tenant a Monetary Order in the amount of **\$165.30**, representing the balance of the security deposit after deducting the Landlord's monetary award. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) 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 26, 2012.

Residential Tenancy Branch