



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPC, MND

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 damage to the rental unit and for order of possession to the rental unit due to alleged cause.

The landlord appeared; the tenant did not appear.

The landlord testified that she served the tenant with the Application for Dispute Resolution and Notice of Hearing by leaving it with the tenant at the rental unit on August 16, 2012.

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 her evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

As a preliminary matter, the landlord said that the tenant vacated the rental unit on August 31, 2012, and that she no longer requires an order of possession for the rental unit. I therefore amended her application excluding her request for such order of possession.

Issue(s) to be Decided

Is the landlord entitled to a monetary order and to recover the filing fee?

Background and Evidence

This tenancy began on November 1, 2011, ended on or about August 31, 2012, when the tenant vacated the rental unit, monthly rent was \$1500.00, and the tenant did not pay a security deposit.

The landlord's monetary claim is in the amount of \$2810.00, comprised of unpaid rent for August 2012, in the amount of \$1500.00, cleaning of \$175.00, painting of \$700.00, damaged tree of \$50.00, damaged windowsill for \$75.00, fireplace inspection for \$60.00 and front door damage for \$250.00.

The landlord testified that she served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on August 3, 2012, when he failed to pay the rent for August. The tenant subsequently vacated the rental unit on or about August 31, 2012, without paying rent of \$1500.00 for that month.

The landlord also said that the tenant and his dog damaged the rental unit and failed to paint the rental unit as per their agreement, which was in lieu of the security deposit.

The landlord's relevant evidence included two letters to the tenant, a bill for \$95.00 for garbage disposal and copies of photographs of the state of the rental unit. I note that the copies were mostly unclear, not showing an accurate depiction of the state of the rental unit.

Analysis

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

In the case before me, I accept the evidence of the landlord that the tenant owed rent of \$1500.00 for August 2012 and vacated the rental unit without paying such rent. I therefore find the landlord has established a monetary claim in the amount of \$1500.00.

As to the remaining portion of the landlord's application for damages, in a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement,

third, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In the case before me, I find the landlord failed to submit proof of a loss, such as through receipts, invoices or evidence of payments, which is step three of her burden of proof. Due to this I find the landlord failed to meet her burden of proof and I must dismiss her application for cleaning of \$175.00, painting of \$700.00, damaged tree of \$50.00, damaged windowsill for \$75.00, fireplace inspection for \$60.00 and front door damage for \$250.00, without leave to reapply.

I find the landlord's application had merit, and I therefore allow her recovery of the filing fee of \$50.00.

Conclusion

I therefore find the landlord has proven a monetary claim of \$1550.00, comprised of unpaid rent of \$1500.00 for August 2012 and the filing fee of \$50.00.

I grant the landlord a final, legally binding monetary order for the amount of \$1550.00, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement 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* and is being mailed to both the applicant and the respondent.

Dated: September 26, 2012.

Residential Tenancy Branch