



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD and FF

Introduction

This hearing was convened on an application by the landlord on August 7, 2012 seeking a monetary award for loss of rent, damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security and pet damage deposits in set off against the balance owed.

Despite having been served with the Notice of Hearing sent by registered mail on August 10, 2012, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to monetary award for the claims submitted and in what amounts.

Claims in damages require that several factors be taken into account: the comparison of move-in vs. move-out condition inspection reports, whether damages are proven and attributable to the tenants, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable. Damage or loss due to non-compliance with the legislation or rental agreement requires the claimant to take reasonable steps to minimize the loss claimed. The burden of proof falls to the applicant.

Background, Evidence and Analysis

This tenancy began on July 16, 2011 under a fixed term rental agreement set to end on July 31, 2012 with the written provision that at the conclusion of the fixed term, the tenancy would continue as a month to month tenancy.

Rent was \$2,000 per month and the landlord holds security and pet damage deposits of \$1,000 each paid at the beginning of the tenancy.

During the hearing, the landlord's agent submitted into evidence a copy of the tenants' notice to end tenancy dated June 30, 2012 but date stamped as received on July 1, 2012 to end the tenancy on July 31, 2012. The landlord stated that the tenant had served the notice on June 1, 2012 when the rent was paid and was, therefore, one day late.

The landlord's agent who does both business management and maintenance for the rental unit submitted a invoices he had submitted to the landlord with respect to the tenancy, a number of photographs, a copy of the rental agreement and move-in/move out condition inspection reports in support of the claims, on which I find as follows:.

Unpaid rent/loss of rent - \$2,000. Section 45 of the *Act* provides that tenants' notice to end tenancy must be given at least one month in advance on a date before the rent due date to take effect at the end of the following rental period. In the present matter, in order to end the tenancy on July 31, 2012, notice would have to have been given on or before June 30, 2012. The agent stated that he began to advertise the rental unit immediately on receiving the notice but that his efforts to find new tenants for August 1, 2012 were frustrated by the tenants' refusal to permit viewing on the weekends when most prospective tenants prefer to see rental properties. The agent submitted no proof of the advertising. Section 7 of the *Act* which permits a party to claim for damage or loss due the non-compliance of the other also requires that the claimant do whatever is reasonable to minimize the loss. In the absence of documentary proof of the advertising, and taking into account the tenants' claimed failure to cooperate with showing the unit, I will allow one-half of this claim.

General cleaning - \$100. On the basis of the photographic evidence and the move-out condition inspection report, this claim for four hours cleaning is allowed in full.

Labour - \$350. The agent's billing to the landlord includes this claim for seven hours of labour including four hours mowing the overgrown grass there times, two hours for garbage remove and going to the dump and one hour to pick up and install a closet door. I find that the itemized hours average \$50 per hour which I find to be higher than prevailing rates for most of the services provided, even taking into account that the agent supplied the equipment and truck. Therefore, I reduce the award on this claim to \$30 per hour and allow \$210.

Fuel surcharges and shop materials - \$30. In the absence of a more detailed accounting on this claim, I will allow \$15.

Dumping fees – \$29. In the absence of a receipt to substantiate this claim, it is dismissed.

Purchase new closet door - \$59.35. The agent submitted a photograph of the broken door on the front lawn as evidence for this claim and it is allowed in full.

For mowing grass during August 2012 - \$100. As the tenants were not resident in the rental unit during August 2012, I find it unreasonable to expect them to maintain the lawn during that period. The claim is dismissed.

HST - \$76.12. As I do not have receipts to verify on which items HST was charged, I cannot make an award on this claim.

Filing fee - \$50. As the application has substantially succeeded on its merits, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenants.

Security deposit and pet damage deposits – (\$2,000). As authorized by section 72 of the *Act*, I order that the landlord retain the amount awarded herein from the security and pet damage deposits, but must return the remainder to the tenants.

Thus, I find that accounts balance as follows:

Tenants' Credits		
Pet damage deposit (No interest due)	<u>1,000.00</u>	
Sub total	\$2,000.00	\$2,000.00
Award to Landlord		
Loss of rent for one-half of August 2012	\$1,000.00	
General cleaning	100.00	
Labour	210.00	
Fuel and shop materials	15.00	
Purchase new closet door	59.35	
Filing fee	<u>50.00</u>	
Sub total	\$1,434.35	<u>- 1,434.35</u>
Balance to be returned to tenants		\$ 565.65

Conclusion

The landlord is authorized to retain **\$1,434.35** from the tenants' security and pet damage deposits in set off against damage and loss.

The tenants' copy of this decision is accompanied by a Monetary Order for **\$565.65**, enforceable through the Provincial Court of British Columbia for return of the remainder **\$535.65** for service on the landlord.

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: October 19, 2012.

Residential Tenancy Branch