



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND; MNR; MNDC; FF

Introduction

This is the Landlords' application for a Monetary Order for damages to the rental unit, unpaid rent or utilities and compensation for damage or loss under the Act regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant.

The Landlord testified that she mailed the Notice of Hearing documents to the Tenant, by registered mail, to the Tenant's forwarding address on September 13, 2012. The Landlord provided a copy of the Canada Post receipt and tracking number in evidence. The Landlord testified that she also mailed the Tenant copies of her documentary evidence, by registered mail, on November 8, 2012.

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.

Issues to be Decided

- Are the Landlords entitled to loss of revenue from August 16 to 31, 2012?
- Are the Landlords entitled to a monetary award for cleaning the rental unit, damages to the rental unit and the cost of outstanding utilities?

Preliminary Matters

There was a prior Decision with respect to this tenancy, dated August 8, 2012. A copy of that Decision was provided in evidence. In that Decision, the Arbitrator found that the Tenant did not provide one clear month's written notice to end the tenancy and the Landlords were awarded loss of revenue from August 1 to 15, 2012. The Landlords were provided leave to apply for loss of revenue for the remainder of August, 2012, if the rental unit remained untenanted from August 16 to 31, 2012. The security deposit was set off against the Landlords' total monetary award and therefore has been extinguished.

It is important to note that the Landlords provided an amended monetary claim within their documentary evidence which was provided to the Tenant by registered mail sent November 8, 2012. Section 90 of the Act provides service in this manner to be effective 5 days after mailing the documents. The Landlords did not amend their Application in accordance with the provisions of Rule 2.5, which states:

2.5 Amending an application before the dispute resolution proceeding

The applicant may amend the application without consent if the dispute resolution proceeding has not yet commenced. If applications have not been served on any respondents, the applicant must submit an amended copy to the Residential Tenancy Branch and serve the amended application.

If the application has been served, and all requirements can be met to serve each respondent with an amended copy at least seven (7) days before the dispute resolution proceeding, the applicant may be permitted to file a revised application with the Residential Tenancy Branch. A copy of the revised application must be served on each respondent at least five (5) days before the scheduled date for dispute resolution proceeding.

Therefore, in this Decision I have considered the Landlords' monetary claim as filed in their Application of September 12, 2012.

Rule 3.5 of the Rules of Procedure requires parties to provide the Residential Tenancy Branch and the other party copies of their documentary evidence as soon as possible, but in any event at least 5 clear days before the date of the Hearing. The Landlords did not provide the Tenant with copies of their documentary evidence within the time frames required under the Rules of Procedure. There was nothing contained in the Landlords' documents that was not available to the Landlords when their Application was filed. Therefore, I have not considered the Landlords' documentary evidence.

Background and Evidence

The Landlord testified that the rental unit was re-rented effective October 1, 2012.

The Landlord testified that the Tenant did not leave the rental unit in reasonably clean condition at the end of the tenancy and that the stove element trays were so dirty that they had to be replaced. She also testified that the walls required touch-up paint because the Tenant had repaired the walls, but had not painted the repairs.

The Tenant stated that the damage that the Landlords are claiming was not caused by him and that there was no move-in condition inspection performed at the beginning of the tenancy.

Analysis

The Landlords have the burden of proof to establish their claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlords 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, regulation or tenancy agreement,
3. Proof of the 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.

In the prior Decision dated August 8, 2012, it was found that the Tenant did not provide due notice to end the tenancy. The Landlord testified that she was not able to re-rent the rental unit in August, 2012, and therefore, I find that the Landlords are entitled to loss of revenue in the amount of **\$375.00** for the period between August 16 and 31, 2012.

I dismiss the remainder of the Landlords' claim as I find that the Landlord did not provided sufficient evidence, in the time allowed by the Act, to satisfy parts 1, 2, or 3 of the test for damages set out above.

The Landlords have been partially successful in their application and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

Conclusion

I hereby provide the Landlords a Monetary Order in the amount of **\$425.00** for service upon the Tenant. This Order 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: November 30, 2012.

Residential Tenancy Branch