



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "*Act*"), seeking an order of possession for unpaid rent or utilities, a monetary order for unpaid rent or utilities, authorization to retain the security deposit, and to recover the filing fee.

An agent for the landlord (the "agent") appeared by conference call and gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and make submissions during the hearing.

As the tenant did not attend the hearing, service was considered. The agent testified that the Notice of Hearing and evidence package was served via registered mail to the tenant at the rental unit address on October 17, 2012. A registered mail receipt tracking number was provided during the hearing and submitted as evidence prior to the hearing. I find the tenant was served accordance with the *Act*.

Preliminary Matter

At the start of the hearing, the agent stated that the tenant has moved out of the rental unit, and as a result, the landlord requested to withdraw their application for an order of possession as the landlord has received possession of the rental unit since filing their application. The hearing proceeded with the landlord's claim for a monetary order.

Issue to be Decided

- Is the landlord entitled to a monetary order under the *Act*?

Background and Evidence

A fixed term tenancy began on June 29, 2011 and reverted to a month to month tenancy as of June 2012. Monthly rent was initially \$950.00 per month and was increased over the course of the tenancy to \$995.00, and was due on the first day of

each month. A security deposit of \$480.00 was paid by the tenant at the start of the tenancy.

Documentary evidence filed by the landlord indicates the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") dated October 6, 2012, with an effective date of October 16, 2012. The notice states that the tenant had five days to pay the rent in full or apply for dispute resolution or the tenancy would end 10 days from the service date. The tenant did not apply to dispute the notice to end tenancy or pay the rent in full within five days from the date of service.

The tenant did not vacate the rental unit until November 1, 2012. Although the landlord was initially seeking \$2,520.00 in their application, the agent amended their application to reflect a mutually settled agreement made in writing during the move-out inspection with the tenant. The agent testified and provided evidence of a move-out condition inspection documents entitled "Deductions From Security Deposit" where the tenant agreed in writing to a deduction of \$1,268.16 and surrendered her full security deposit of \$480.00 towards the balance owing, resulting in a balance owing of \$788.16 comprised as follows:

October 2012 rent owing	\$995.00
General cleaning fee	\$75.00
Carpet cleaning fee	\$95.00
Furniture removal fee	\$50.00
Door paint – one coat	\$20.16
Subtotal	\$1,268.16
(Less \$480.00 security deposit)	(\$480.00)
Total owing to landlord	\$788.16

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Landlord's monetary claim – The landlord initially applied for \$2,520.00 and amended their application during the hearing to **\$1,268.16**. **I find** that reducing the monetary amount being claimed does not prejudice the tenant, and therefore, the amendment was granted.

I find that based on the mutual written agreement between the parties which addressed unpaid rent, carpet cleaning, general cleaning, paint, furniture removal and the security deposit, the landlord limited their claim to \$1,268.16 which after the tenant surrendered her security deposit of \$480.00, leaves a balance owing to the landlord in the amount of \$788.16 in accordance with the written agreement made with the tenant on November 1, 2012.

Section 26 of the *Act* states that rent must be paid by the tenant on the date it is due. **I find** the tenant failed to pay rent for October 2012, and did not pay rent for November 1, 2012, which was the same date she vacated the rental unit. **I find** the landlord has met the burden of proof in establishing a monetary claim in the amount of **\$1,268.16** pursuant to the mutual agreement of the parties described above.

As the landlord's application had merit, **I grant** the landlord the filing fee of **\$50.00**.

I find the landlord has established a total monetary claim of **\$1,318.16** comprised of \$1,268.16 as described above and the \$50.00 filing fee. **I authorize** the landlord to retain the full security deposit of \$480.00 towards the unpaid rent for October 2012 and **I grant** the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing to the landlord in the amount of **\$838.16**.

Conclusion

I find that the landlord has established a total monetary claim of \$1,318.16. I order that the landlord retain the security deposit of \$480.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$838.16**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 21, 2012

Residential Tenancy Branch