



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MND, MNSD and FF

Introduction

This hearing was convened on an application by the landlord on October 24, 2012 seeking a monetary award for unpaid utilities, damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing sent on September 16, 2012 by registered mail to the addresses provided by the tenants, the tenants did not call in to the number provided to enable her 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 and Evidence and Analysis

This tenancy began on March 15, 2012 and ended on August 31, 2012. Rent was \$980 per month and the landlord held a security deposit of \$480 and a pet damage deposit of \$300 paid at the beginning of the tenancy.

During the hearing, the landlord submitted into evidence a copy of a letter to the tenants dated September 5, 2012 including a small list of claims she wished to charge against the security deposit.

The letter advised that the landlord proposed to retain \$128.78 of the \$780 on deposit to which she unnecessarily credited \$7.80 interest and stated that she would be returning \$659.02 to the tenants on September 15, 2012.

The letter asked for the tenants' consent and cautioned that if they did not consent, she would be required to make application for dispute resolution which could result in the \$50 filing fee being added to her claims.

The tenants did not reply and the landlord submitted a bank statement showing that the cheque for \$659.02 was cashed on September 17, 2012.

The \$128.78 initially claimed by the landlord had included repair of a broken blind at \$27.98, repair of holes dug in the back yard by the tenants' dog at \$28.00 and half of a furnace servicing bill anticipated as the tenants had let the tank run dry for which the landlord had claimed \$72.80..

By letter of September 15, 2012, the landlord advised the tenants of amendments to her claim. One was removal of the furnace repair charge which had turned out to be unnecessary and the other was the addition of an unpaid utilities bill of \$315.68 for the May 16 to August 31, 2012 period for which the landlord submitted an invoice. The landlord stated that the utilities bill remained unpaid at the time of the hearing.

Analysis.

Section 67 of the *Act* authorizes the director's delegate to determine an amount owed by one party to another due to a breach of the rental agreement or the legislation and to order payment of that amount.

Section 72 of the *Act* empowers the director's delegate to order that the landlord may retain an amount found to be owed by the tenants from the security and pet damage deposits and to order that a respondent pay the applicant's filing fee.

In the present matter, I find that the landlord has complied with section 38(1) of the *Act* by making application within 15 days of end of the tenancy.

In the absence of any evidence to the contrary, I find that the landlord is entitled to recover the claims submitted, to have retain the amounts she did from the deposits and to recover the filing fee for this proceeding as follows:

| Amount owed to landlord | | |
|--|-----------------|-----------------|
| Repair pet damage to back yard | 28.00 | |
| Unpaid utilities | 315.68 | |
| Filing fee | <u>50.00</u> | |
| Sub total | \$421.66 | \$421.66 |
| Tenants' credits | | |
| Security deposit (No interest due) | \$480.00 | |
| Pet damage deposit (No interest due) | 300.00 | |
| Less amount returned on September 15, 2012 | - <u>659.02</u> | |
| Sub total | \$120.98 | - <u>120.98</u> |
| TOTAL remaining owed to landlord | | \$300.68 |

Conclusion

In addition to authorization to retain the portion of the security deposit previously held back, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$300.68** for service on the tenants.

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 29, 2012.

Residential Tenancy Branch