



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC MND FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent or utilities, to keep the security deposit, for money owed for compensation for damage or loss under the Act, regulation or tenancy agreement, for damage to the unit, site or property, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Landlord be granted a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of the following: the tenancy agreement; a move in condition inspection report form; a move out condition inspection report form; a 1 Month Notice to end tenancy for cause issued July 25, 2012; photos of a rental unit window; and a purchase order for the purchase of window blinds.

The Tenant stated she did not receive all of the Landlord's evidence, as listed above. Specifically, she did not receive a copy of the purchase order or photos of the patio door.

The Landlord confirmed the Tenant was not sent copies of the purchase order and photos.

The parties confirmed they initially entered into a fixed term tenancy agreement that began on March 21, 2011 and a subsequent agreement which began on April 1, 2012 for a fixed 12 month period. Rent was payable on the first of each month in the amount of \$750.00 and on March 21, 2011, the Tenant paid \$375.00 as the security deposit. The Tenant attended the move in inspection March 21, 2012 and the move out inspection on September 9, 2012 which is when she provided the Landlord with her forwarding address.

The Landlord explained that this tenancy was to end on August 31, 2012, as the Tenant had been served a 1 Month Notice; however, the Tenant continued to occupy the unit until September 9, 2012 and she did not pay for occupancy.

The Landlord is seeking monetary compensation in the amount of \$325.00 which includes \$50.00 for window blinds and \$175.00 for loss of revenue for September 1 – 9, 2012. The Landlord advised that the \$150.00 included a \$25.00 charge for labour to reinstall the blinds which she argued were new in 2011.

The Tenant confirmed attending the move out inspection and stated she signed the condition inspection form to show she disagreed with the \$150.00 maintenance charge. She said the blinds were about ten years old and that only three small plastic clips were broken not the blind slats. She argued that many tenants had these clips break on them and the parts are only about \$1.75 each.

The Tenant submitted that she had a verbal agreement with the Landlord to allow her to stay in the unit until September 15, 2012, and that this agreement was to allow her to stay rent free as she was cleaning the unit and making arrangements to move without arguing or being disruptive.

The Landlord denies allowing the Tenant to continue to occupy the unit for free. She said she had told the Tenant on several occasions to be out of the unit by August 31, 2012 and that if she continues to stay she will have to pay rent.

Analysis

The Landlord confirmed that they did not provide the Tenant with copies of their purchase order and photographs, which is a contravention of section 3.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the Tenant has not received copies of the Landlord's latest submissions of evidence, I find that the Landlord's evidence that included a purchase order and photographs cannot be considered in my decision. I did however consider the Landlord's remaining evidence and the Landlord's testimony.

When a landlord makes a claim for damage or loss the burden of proof lies with the landlord to establish their claim. To prove a loss the applicant must satisfy the following four 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 other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Landlord has the burden to prove the age of the window blinds, what the damage was, and the actual cost incurred to repair them. The only evidence before me was disputed verbal testimony which I find to be insufficient to meet the Landlord's burden of proof. Accordingly, I dismiss the Landlord's claim for \$150.00 to repair the window blinds, without leave to reapply.

The evidence supports this tenancy ended, in accordance with the 1 Month Notice, on August 31, 2012, and that the Tenant continued to occupy the rental unit until September 9, 2012, without paying for use and occupancy of the unit.

The Residential Tenancy Policy Guideline # 3 stipulates that a tenant is not liable to pay rent after a tenancy agreement has ended pursuant to this provision, however if a tenant remains in possession of the premises (overholds), the tenant will be liable to

pay occupation rent on a *per diem* basis until the landlord recovers possession of the premises.

As per the foregoing I find the Landlord has met the burden of proof for occupancy or loss of revenue charges for the period of September 1 – 9, 2012, and I award them **\$175.00**.

The Landlord has been partially successful with their application; therefore I award partial recovery of the filing fee in the amount of **\$25.00**.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Occupancy September 1 – 9, 2012	\$175.00
Filing Fee	<u>25.00</u>
SUBTOTAL	\$200.00
LESS: Security Deposit \$375.00 + Interest 0.00	<u>-375.00</u>
Offset amount due to the Tenant	<u>\$175.00</u>

I HEREBY ORDER the Landlord to return **\$175.00** of the security deposit to the Tenant forthwith.

Each party provided a new service address during the hearing, which I have listed on the front page of this decision.

Conclusion

The Landlord has been Ordered to return **\$175.00** of the security deposit to the Tenant. In the event that the Landlord does not comply with this Order the Tenant may serve the Landlord with the enclosed Monetary Order and may file the Order with the Province of British Columbia Small Claims Court to enforce it 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: December 07, 2012.
