

DECISION

Dispute Codes:

Landlord's application: MND; MNR; MNDC; MNSD; FF

Tenant's application: MNSD

Introduction

This Hearing was convened to consider cross applications. The Landlord seeks a Monetary Order for unpaid rent and damages to the rental unit; compensation for damage or loss under the Act regulation or tenancy agreement; to apply the security deposit towards partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenant.

The Tenant seeks return of the security deposit.

The Landlord and his agent gave affirmed testimony at the Hearing.

The Landlord testified that he sent the Tenant his Notice of Hearing documents by registered mail to the forwarding address provided by the Tenant, on September 19, 2012. A copy of the receipt and tracking number was provided in evidence. The Landlord stated that the documents were returned to him "unclaimed" on October 20, 2012.

The Landlord testified that he sent the Tenant his amended Application for Dispute resolution and copies of his documentary evidence, by registered mail, on November 21, 2012. The Landlord stated that the Tenant accepted delivery of these documents on November 26, 2012. A copy of the registered mail receipt and tracking number was also provided for these documents.

Based on the Landlord's affirmed testimony and documentary evidence, I am satisfied that the Tenant was served with the Notice of Hearing documents in accordance with the provisions of Section 89(1)(c) of the Act. Despite being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference which remained open for 10 minutes, at which time it was locked.

Rule 10.1 of the Residential Tenancy Branch Rules of Procedure provides as follows:

Commencement of Hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Both matters were scheduled to be heard by teleconference at 9:30 a.m., December 7, 2012. The Landlord and his agent signed into the conference on time and were ready to proceed. The Tenant did not sign into the conference and therefore her application was dismissed without leave to reapply. The Hearing continued in the Tenant's absence with respect to the Landlord's application.

Issues to be Decided

1. Is the Landlord entitled to a monetary award pursuant to the provisions of Section 67 of the Act?
2. If so, may the Landlord apply the security deposit towards his monetary award?

Background and Evidence

The Landlord and his agent provided the following testimony and documentary evidence:

A copy of the tenancy agreement was provided in evidence. This tenancy began on May 15, 2012 and was for a term ending August 31, 2013. Monthly rent was \$890.00, due on the first day of each month. The Tenant paid a security deposit on May 15, 2012, in the amount of \$400.00.

On August 4, 2012, the Tenant e-mailed the Landlord advising that she was going to end the tenancy at the end of August. On August 9, 2012, the Tenant provided written notification that she was ending the tenancy effective August 31, 2012. In the letter, the Tenant claimed that she felt uncomfortable living in the rental unit due to comments that the Landlord made in early July, 2012, and also because she alleged the Landlord was looking in her windows and had restricted her guest's time for visiting and right to park at the rental unit. The Landlord provided a copy of the Tenant's letter in evidence.

On July 15, 2012, the Landlord apologized to the Tenant for his comments and for restricting the Tenant's guest's parking. A copy of the e-mail was provided in evidence. The Tenant continued to ask for and accept rides from the Landlord after the incident. The Landlord looked into the Tenant's window on July 14, 2012, because the Tenant had told him she would be away and he saw light flickering in the suite window. It turned out to be the Tenant's TV that had been left on, so the Landlord did not consider it an emergency and did nothing.

The Landlord conducted an inspection of the rental property on August 31, 2012, with the Tenant present, but the Tenant refused to sign the Condition Inspection Report. The Landlord provided a copy of the report along with the Notice of Final Inspection Opportunity in evidence.

The Tenant did not leave the rental unit in reasonably clean condition and damaged a wall in the bedroom. The Landlord hired a cleaner to clean the rental unit and a painter to repair the wall and paint it. The Landlord provided copies of the invoices dated September 4 and 8 respectively.

The Landlord advertised the rental unit for rent on August 8, 18, 22, September 2, 14 and 20. The Landlord provided copies of the invoices for the advertisements. The rental unit was re-rented for October 1, 2012.

The Landlord seeks a monetary award, calculated as follows:

Description	Amount
Loss of revenue for the month of September, 2012	\$890.00
Cost of repairing and painting one wall	\$130.00
Cost of cleaning the suite	\$50.00
Cost of advertising the rental unit	\$116.45
Cost of serving Tenant by registered mail	\$43.00
Cost of office supplies and photocopies	\$23.68
Recovery of filing fee	\$50.00
TOTAL	\$1,303.13

Analysis

I dismiss the Landlord's claim with respect to recovery of the costs of serving the Tenant, developing photographs and office supplies as these are not costs that are contemplated or recoverable under the provisions of the Act.

Section 67 of the Act provides that if damage or loss results from a party not complying with the Act, regulation or tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The Tenant signed a lease agreement with the Landlord on May 12, 2012, for a term of 15 ½ months. Section 44 of the Act provides the only ways in which a tenancy ends, which includes a tenant's notice under Section 45 of the Act.

Section 45 of the Act states, in part:

Tenant's notice

- 45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a **material term of the tenancy agreement** or, in relation to an assisted or supported living tenancy, of the service agreement, and **has not corrected the situation within a reasonable period after the tenant gives written notice of the failure**, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(my emphasis)

Section 52 of the Act requires that the Tenant's notice to end tenancy be in writing.

I find that the Tenant did not end the tenancy in accordance with the provisions of Section 45 (2) or (3) of the Act. I find insufficient evidence that the Landlord failed to comply with a material term of the tenancy agreement, or that the Tenant provided him a reasonable period in which to correct any alleged breach before ending the tenancy.

I find that the Landlord suffered a loss as a result of the Tenant's failure to comply with Section 45 of the Act and that he is entitled to loss of revenue for the month of September, 2012, in the amount of **\$890.00**.

Section 37 of the Act requires a tenant to leave the rental unit reasonably clean at the end of a tenancy, and undamaged except for reasonable wear and tear. I accept the Landlord's evidence that the Tenant damaged a wall in the rental unit and did not leave the rental unit reasonably clean at the end of the tenancy. I find that the wall damage is not "reasonable wear and tear". The Landlord provided copies of invoices for the cost of cleaning and repairing the wall, and I find that he is entitled to this portion of his claim in the total amount of **\$180.00**.

The Tenant ended the tenancy before its term was completed, contrary to the tenancy agreement, and I find that the Landlord is entitled to the costs of advertising the rental unit in the amount of **\$116.45**, as supported by the invoices provided.

The Landlord has been successful in his application and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the security deposit towards partial satisfaction of his monetary award.

I hereby provide the Landlord a Monetary Order, calculated as follows:

Description	Amount
Loss of revenue for the month of September, 2012	\$890.00
Cost of repairing and painting one wall and cleaning the suite	\$180.00
Cost of advertising the rental unit	\$116.45
Recovery of filing fee	<u>\$50.00</u>
Subtotal	\$1,236.45
Less set off of security deposit	-\$400.00
TOTAL	\$836.45

Conclusion

The Tenant's application is **dismissed without leave to reapply**.

I hereby provide the Landlord a Monetary Order in the amount of **\$836.45** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims Court) 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: December 07, 2012.

Residential Tenancy Branch