



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNR, MNSD, O, FF
Tenant: MNSD, O

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord only.

The landlord clarified at the outset of the hearing she was not seeking to obtain a pet damage deposit and as such, I have amended her Application to exclude this part of her financial claim.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for compensation for damage or loss; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled; to a monetary order for the return of rent and for all or part of the security deposit, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

Both parties provided a copy of a tenancy agreement signed by the parties on October 15, 2012 for a month to month tenancy beginning on November 1, 2012 for a monthly rent of \$650.00 due on the 1st of each month with a security deposit paid of \$325.00. Although the tenancy agreement stipulates that a pet damage deposit was required the landlord testified the pet damage deposit was not paid.

The landlord testified that the security deposit and rent for the month of November 2012 was paid but that the tenant did not move in to the rental unit. The landlord submits the tenant came for the move in inspection and she asked him to come back in an hour and that when he returned he should have the pet damage deposit with him and they would complete the move in inspection. The landlord submits the tenant never returned.

The landlord submits the rental unit was ready for the tenant and that the work that she had been doing in the rental unit was as a result of requests from the tenant. She submits that she installed laundry facilities; removed carpet and painted the floors; re-faced the fireplace; and work on the yard and fence. The landlord seeks compensation for this work.

The landlord submitted copies of several text messages between the parties regarding the tenant's inability to help with some of the work that was being completed prior to the start of the tenancy and with the events leading up to and following the start date of the tenancy.

The landlord seeks the following compensation:

Description	Amount
December Rent	\$650.00
Sanding equipment/supplies	\$65.56
Concrete paint/supplies	\$162.03
Handyman services	\$160.00
Total	\$1,362.59

Analysis

Section 16 of the *Act* states the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 45(1) of the *Act* stipulates that a tenant may end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy 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.

In the case before me I find the tenant did not provide the landlord with a written notice of the landlord failing to comply with a material term of the tenancy, as such the earliest the tenant could end the tenancy would have been December 31, 2012 and I therefore find the tenant is responsible for the payment of rent for the month of December 2012.

I also find, based on the landlord's undisputed testimony that despite interviewing several potential tenants she was not able to re-rent the unit until January 15, 2013. I find the landlord took reasonable steps to mitigate her losses in relation to lost rent.

Despite the large volume of text message correspondence, I find no evidence provided by either party that the tenancy was contingent upon the renovations the landlord made to the tenancy. While I accept that the landlord completed these renovations at the request of the tenants she was under no contractual obligation to make them.

Further, with specific reference to the items like the flooring and the fireplace despite entering into a new tenancy agreement these areas remain unchanged and I find the landlord has not established any loss as a result of the changes.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$675.00** comprised of \$650.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$325.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$350.00**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

In the absence of the applicant tenant, I dismiss the tenant's Application without leave to reapply.

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: January 31, 2013

Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.rto.gov.bc.ca) has information about:

- How and when to enforce an order of possession:
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:
Fact Sheet RTB-100: *Review Consideration of a Decision or Order*
(Please Note: Legislated deadlines apply)

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca