



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord October 9, 2012, to obtain a Monetary Order for: damage to the unit, site or property; for unpaid rent or utilities; to keep all or part of the pet and or security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The Landlord affirmed that the Tenant NAM was served the Application for Dispute Resolution and Notice of hearing documents by registered mail on October 10, 2012 and provided the tracking information. She also affirmed that the Tenants N. M. and N. B. were served the Application for Dispute Resolution and Notice of hearing documents by registered mail on October 10, 2012 and provided the tracking information.

The Landlord confirmed that only one package was sent to N. M. and N. B. as they resided at the same address. She stated that N. M. signed for the registered mail because N. B. was currently working out of town.

Section 89(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Landlord has applied for a monetary Order which requires that the Landlord serve **each** respondent as set out under *Residential Tenancy Rules of Procedures*. In this case only two of the three Tenants have been served with the Notice of Dispute Resolution documents. Therefore, I find that the request for a Monetary Order against all of the Tenants must be amended to include only the two female Tenants who have been properly served with Notice of this Proceeding. As the male Tenant, N. B., has not been properly served the Application for Dispute Resolution as required, the monetary claim against the male Tenant, N. B., is dismissed without leave to reapply.

Based on the submissions of the Landlord I find that N. M. and NAM have been served with the Notice of Dispute Resolution Proceeding documents in accordance with section 89 of the *Act* and I continued in their absence.

Issue(s) to be Decided

Should the Landlord be awarded a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: the Tenants' notice to end tenancy; e-mail and written communications between the parties; the Tenants' forwarding addresses; the tenancy agreement, condition inspection report forms; an invoice for cleanup of debris and the yard; and a copy of the tenancy agreement for the new tenants.

The Landlord confirmed the parties entered into a fixed term tenancy agreement that began on June 1, 2012 and was scheduled to end on May 30, 2013. Rent was payable on the first of each month in the amount of \$2,000.00 and on April 27, 2012 the Tenants paid \$1,000.00 as the security deposit. The Tenants ended the tenancy early and vacated by September 30, 2012. The Tenants attended the move in inspection on June 29, 2012 however they did not attend the move out inspection on September 30, 2012.

The Landlord applied to recover lost rent for October 2012 in the amount of \$1,612.00, and for \$210.00 which is what she had to pay to remove the debris and furniture left behind by the Tenants.

The Landlord advised that she was not able to re-rent the upstairs unit until November 1, 2012 and the downstairs unit until December 1, 2012 so she was wondering if she could claim for the additional loss of rent.

Analysis

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.

Section 45 (2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

I accept the undisputed evidence before me and I find the Tenants ended this tenancy September 30, 2012 in breached the *Act* as their fixed term tenancy did not expire until May 30, 2013. Furthermore, I find it was the Tenant's breached that caused the Landlord to suffer a loss of rent for the month of October 2012. Accordingly, I award the Landlord loss of rent in the amount of **\$1,612.00**.

The Landlord requested to amend her application to include additional loss of rent for November. The Tenants were not previously notified of the Landlord's intent to claim loss of rent for November 2012; therefore, I dismiss the Landlord's request for November 2012 loss of rent, with leave to reapply.

Section 37(2) of the *Act* provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Based on the aforementioned I find the Tenants have breached section 37(2) of the *Act*, leaving the yard unkempt and littered with debris, causing the Landlord to suffer a loss to have it cleaned up. Accordingly, I award the Landlord **\$210.00** for the cost incurred to clean up the yard and remove the Tenant's debris.

The Landlord has been successful with their application; therefore I award recovery of the filing fee in the amount of **\$50.00**.

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 Tenants' security deposit plus interest as follows:

Loss of Rent	\$1,612.00
Yard cleanup and debris removal	210.00
Filing Fee	50.00
SUBTOTAL	\$1,872.00
LESS: Security Deposit \$1,000.00 + Interest 0.00	-1,000.00
Offset amount due to the Landlord	<u>\$ 872.00</u>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$872.00**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province 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: January 02, 2013.

Residential Tenancy Branch