



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 401721 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with a landlord's application for Monetary Order for unpaid rent; damage to the rental unit; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The male tenant confirmed he was representing both named tenants.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for four months of rent and damage to the rental unit, for the amounts claimed?
2. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced September 1, 2011 and the tenants paid a security deposit of \$500.00. The tenants were required to pay rent of \$1,000.00 on the 1st day of every month. On September 10, 2012 the landlord's manager personally served the tenants with a 10 Day Notice to end Tenancy for Unpaid Rent (the Notice). The Notice indicates that rent of \$2,000.00 was outstanding as of September 1, 2012.

Under the Direct Request procedure the landlord was provided an Order of Possession and a Monetary Order in the amount of \$2,000.00 based upon the 10 Day Notice issued September 10, 2012 (file no. 796870). The Arbitrator found that as of September 1, 2012 the tenants owed \$2,000.00 in rent. The tenants vacated the rental unit on or about October 10, 2012 after being served with an Order of Possession.

By way of this application the landlord requested a Monetary Order in the amount of \$4,000.00 for unpaid rent for the months of July, August, September and October 2012.

The landlord submitted that the amount indicated on the 10 Day Notice and the Monetary Order reflect rent owed for July and August 2012.

The tenant submitted that rent for July 2012 was paid in cash at the landlord's place of business and that he did not receive a receipt but that receipts for cash payments were not issued by the landlord. The tenant acknowledged that rent was not paid for August 2012 and September 2012. The tenant was agreeable to paying rent for one-half of October 2012 rent in recognition that the rental unit was occupied for a portion of the month.

The landlord is also seeking compensation of \$1,000.00 for damage to the unit. The landlord submitted the tenants soiled the carpeting to the extent that it required replacement. In addition, the vinyl flooring was replaced and garbage was hauled away. The landlord did not prepare condition inspection reports and did not submit photographs or receipts prior to the hearing. During the hearing I noted that the landlord's claims for specific items were approximations. The landlord claimed the rental unit had new flooring and paint at the beginning of the tenancy.

The tenant acknowledged that some additional cleaning may have been required and a small amount of garbage was left at the rental unit when they vacated. The tenant acknowledged the carpeting looked rather new at the beginning of the tenancy but was of the position the vinyl flooring and paint was rather old. The tenant was agreeable to compensating the landlord \$500.00 – the equivalent of the security deposit – for cleaning and garbage removal.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. Verification of the value of the loss; and,

4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Unpaid / Loss of Rent

Upon review of the decision issued October 1, 2012 under file no. 796870 I note that the Arbitrator, as a delegated authority of the Director, made a finding that as of September 1, 2012 the tenants owed rent of \$2,000.00 based upon the 10 Day Notice issued by the landlord on September 10, 2012.

Findings and decisions of an Arbitrator are final and binding. As such, I cannot make a finding that the tenants owed a different amount as of September 1, 2012. As it has already been found that the tenants owed \$2,000.00 in rent as of September 1, 2012 and rent was payable on the 1st day of the month, I find the issue for me to decide is whether the landlord is entitled to unpaid or loss of rent for October 2012.

The 10 Day Notice served upon the tenants had a stated effective date of September 20, 2012. The tenants failed to comply with that Notice and vacate the rental unit by the effective date. Nor was I provided evidence the tenants otherwise ended their tenancy by giving the landlord proper written notice at least one month in advance. Therefore, I am satisfied the landlord suffered a loss of rent for the month of October 2012 due to the tenants failure to comply with their obligations under the Act by not paying rent, by not giving proper notice to end the tenancy, and by not vacating the rental unit by the effective date on the 10 Day Notice.

In light of the above, I award the landlord loss of rent for the entire month of October 2012 in the amount of \$1,000.00.

Damage and cleaning

In the absence of condition inspection reports, photographs, or receipts I find the disputed verbal testimony insufficient to find: the tenants damaged the unit to the extend submitted by the landlord; that the landlord suffered a loss in the amount requested; or, that the value of the loss exceeds the damages acknowledged by the tenant during the hearing. Therefore, I award the landlord \$500.00 as acknowledged by the tenant during the hearing.

Monetary Order

I award the landlord the filing fee paid for this application. I authorize the landlord to retain the security deposit in partial satisfaction of the amounts awarded to the landlord.

The landlord has been provided a Monetary Order calculated as follows:

Loss of Rent – October 2012	\$ 1,000.00
Damage, cleaning and garbage removal	500.00
Filing fee	50.00
Less: security deposit	<u>(500.00)</u>
Monetary Order	\$ 1,050.00

To enforce the Monetary Order the landlord must serve it upon the tenants and the landlord may file it in Provincial Court (Small Claims) to enforce as an Order of the court.

The Monetary Order provided to the landlord under file no. 796870 remains enforceable and the Monetary Order provided with this decision reflects amounts the have accrued since the previous Application was filed. Thus, both Monetary Orders provided to the landlord with respect to this tenancy are enforceable against the tenants.

Conclusion

The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance remaining of \$1,050.00 to serve and enforce as necessary.

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: March 1, 2013

Residential Tenancy Branch

