



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord requested compensation for damage to the rental unit, unpaid rent, compensation for damage or loss under the Act, to retain the security deposit, and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on January 14, 2013 copies of the Application for Dispute Resolution and Notice of Hearing were sent to each tenant via registered mail at the address noted on the Application. Canada Post tracking numbers were provided as evidence of service; the landlord has the receipts.

The landlord said that tenant A.M. vacated the rental unit on January 16, 2013, tenant K.G. remained in the unit until February 2, 2013.

Therefore, I find that the documents are deemed to have been served in accordance with section 89 and 90 of the Act to tenant K.G.; however the tenant did not appear at the hearing.

I find that tenant A.M. was not served with notice of the hearing as she was not residing in the rental unit on the 5th day after the registered mail was sent by the landlord. The landlord did not provide any proof that the registered mail had been received by A.M. Therefore, the claim against A.M. is dismissed and the landlord proceeded with a claim against the co-tenant, K.G.

Preliminary Matters

The landlord did not submit any evidence with his January 11, 2013 application. On January 28, 2013 the landlord submitted 11 pages of evidence which was put in the tenant's mail slot on the same day.

This evidence was not submitted to the Residential Tenancy Branch at least 5 days prior to the hearing; the day of service, the day of the hearing and weekends are not counted. Therefore, I determined the landlord's evidence must be set aside; he was at liberty to make oral submissions.

The landlord did not provide a detailed calculation for items included on the application; only the rent and utility costs were detailed.

The landlord wished to proceed with the hearing, on the basis of oral submissions only and in the absence of a detailed calculation of the claim. The landlord said he also wanted to submit a claim for loss of rent revenue; however, taking into account the items indicated, the application did not include a detailed claim or monetary amount for loss of revenue.

The landlord said that he now has possession of the rental unit as the tenant vacated on February 2, 2013. Therefore, the landlord withdrew his request for an order of possession.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent and utilities?

Is the landlord entitled to compensation for damage to the rental unit and damages?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on October 1, 2012; rent was \$890.00 due on the first day of each month. A deposit in the sum of \$495.00 was paid. The tenants were to pay 70% of utility costs. A move-in and move-out condition inspection report was not completed.

The landlord said that the tenants did not pay January 2013 rent and he has claimed compensation in that sum. The tenants were given a 10 Day Notice to End the Tenancy for Unpaid Rent, requiring the tenants to vacate in mid-January, 2013.

The landlord also made the following claim:

- \$210.00 - Gas utility
- Broken window;
- Loss of February 2013 rent; and
- Carpet cleaning.

The landlord said that the utility bills were in his late evidence submission and that the tenant owes \$123.60 for November and \$81.15 for December, 2012. The landlord said that he turned the gas service off at the end of December, as the tenants had failed to pay the bills.

The landlord has carpet cleaning equipment and said he is charging the tenants \$90.00 for cleaning.

As the tenant vacated on February 2, 2012, the landlord is claiming a loss of February 2013 rent in the sum of \$890.00.

The landlord said the tenants vacated too late to allow a new occupant to move into the unit.

A window was broken by the tenants and the landlord has claimed compensation in an undetermined amount.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find, on the balance of probabilities, that the tenants failed to pay January 2013 rent and that the landlord is entitled to compensation in the sum of \$890.00.

The landlord did not include a detailed calculation of his claim as part of the application, as is required. The total amount claimed, taking into account utilities and damages, plus loss of rent revenue would exceed the total amount indicated on the application. Therefore, I find that the landlord is at liberty to submit an application claiming a loss of rent revenue for February 2013.

No verification of the cost of the window and carpet cleaning or the specific amounts claimed for each was included on the application. In the absence of a move-out and move-in condition inspection report, invoices verifying the costs claimed or evidence of the need to clean the carpets and repair a window, I find that this portion of the application is dismissed. When serving a respondent with an application the applicant must set out a specific detailed calculation of the claim; this did not occur.

I find that the landlord's application has merit in relation to unpaid rent and that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$495.00, in partial satisfaction of the monetary claim for unpaid rent.

Based on these determinations I grant the landlord a monetary Order for \$445.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to compensation for unpaid January 2013 rent.

The landlord may apply for loss of February 2013 rent revenue.

The balance of the landlord's claim is dismissed.

The landlord may retain the deposit.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 05, 2013

Residential Tenancy Branch

