



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sutton Advantage
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and unpaid utilities, for authority to retain the tenant's security deposit, and for recovery of the filing fee.

The landlord's agent (hereafter referred to as landlord) appeared; the tenant did not appear.

The landlord gave evidence that he served the tenant with their Application for Dispute Resolution and Notice of Hearing by registered mail on January 17, 2013. The landlord supplied the receipt and tracking number of the registered mail.

I find the tenant was served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present his evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order, to authority to retain the tenant's security deposit, and to recover the filing fee?

Background and Evidence

The landlord provided evidence that this tenancy began on February 1, 2012, ended on December 31, 2012, monthly rent was \$850.00, and the tenant paid a security deposit of \$425.00.

The landlord explained that originally another tenant also lived in the rental unit; however that tenant vacated before the end of the tenancy without providing a forwarding address.

The landlord's monetary claim is in the amount of \$1404.63, comprised of oil replacement of \$1146.24, carpet cleaning for \$203.39, and NSF/late fees of \$55.00.

The landlord's relevant evidence included a security deposit statement listing the amounts charged to the tenant's account, the tenancy agreement, a receipt from the oil company, a receipt from the carpet cleaning company, a letter from the tenant providing a forwarding address, and a tenant ledger sheet.

The landlord stated that the oil tank providing furnace fuel for the rental unit was filled prior to the tenancy, and the tenant was required, pursuant to the tenancy agreement addendum, to pay for the replacement oil at the end of the tenancy. The landlord filled the oil tank when the tenant moved out, at a cost of \$1146.24.

The landlord stated that the tenant was also required to have the carpets cleaned, per the tenancy agreement, and that the tenant did not do so, requiring the landlord to pay for the cleaning, at a cost of \$203.39.

The landlord stated that the carpets did need extensive cleaning at the end of the tenancy.

The landlord provided evidence that during the tenancy, the tenant accrued NSF/late fees in the amount of \$55.00.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

As the tenant failed to attend the hearing to rebut the landlord's evidence, after being duly served, I find the landlord provided sufficient evidence that the tenant was contractually required to replace the furnace oil used during the tenancy and did not do so. I therefore find the landlord is entitled to a monetary award of \$1146.24 for oil replacement.

I also find the landlord provided sufficient evidence of the unclean carpet in the rental unit at the end of the tenancy, that the tenant was required to clean the carpet, and failed to do so. I therefore find that the landlord is entitled to a monetary award of \$203.39 for carpet cleaning.

I also find that the tenant accrued fees attributable to him, in the amount of \$55.00.

I find the landlord is entitled to recover the filing fee of \$50.00.

Due to the above, I find the landlord has proven a total monetary claim of \$1404.63, comprised of oil replacement of \$1146.24, carpet cleaning for \$203.39, and NSF/late fees of \$55.00.

Conclusion

The landlord has proven a total monetary claim of \$1404.63.

At the landlord's request, I allow the landlord to retain the tenant's security deposit of \$425.00 in partial satisfaction of their monetary award.

I therefore grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$979.63, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. Costs of enforcement may be recoverable from the tenant.

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* and is being mailed to both the applicant and the respondent.

Dated: March 25, 2013

Residential Tenancy Branch

