



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD and FF

Introduction

By application of January 20, 2013, the landlord sought a monetary award for unpaid rent, loss or damage under the legislation or rental agreement, damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing in person on January 28, 2013 as verified by a sworn Affidavit of the process server submitted into evidence, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. As authorized by section 71(2)(b) of the *Act*, I found that the tenant had been sufficiently served for the purposes of the *Act* and the hearing proceeded in the absence of the tenant.

Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to monetary award for the claims submitted and in what amounts.

Claims in damages require that several factors be taken into account: whether damages are proven and attributable to the tenant, the comparison of move-in vs. move-out condition inspection reports, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable. Damage or loss due to non-compliance with the legislation or rental agreement requires the claimant to take reasonable steps to minimize the loss claimed. The burden of proof falls to the applicant.

Background, Evidence and Analysis

This tenancy began on August 1, 2011 under a fixed term rental agreement set to end on April 30, 2013. Rent was \$1,000 per month and the landlord holds security deposit of \$461.55 paid at the beginning of the tenancy.

The landlord stated that the parties had agreed that the tenant's rent was to be paid at a rate of \$461.55 every two weeks by direct deposit, an equivalent of \$1,000 per month.

During the hearing, the landlord gave evidence that the tenant vacated the rental unit on September 30, 2012 after service of a 10-day Notice to End Tenancy for unpaid rent on September 18, 2012. The notice was issued when the tenant had a rent shortfall from July and August 2012 of \$461.55 and her cheque for the \$1,000 September 2012 rent was returned NSF.

The landlord submitted into evidence a copy of the rental agreement, move-in condition inspection report, exchanges of emails between the parties, photograph and receipts for repairs to the rental unit. The tenant did not provide the landlord with a forwarding address and had submitted no documentary evidence.

At the commencement of the hearing, I advised the landlord that there is no mechanism under the *Act* to allow for reimbursement of his claim for the cost of the process server which is deemed to be a standard cost of doing business.

On the balance the landlord's claims, I find as follows:

Unpaid rent - \$1,461.55. This claim includes the rent shortfall for August 2012 of \$461.55 and the full \$1,000 rent for September 2012. In the absence of any evidence to the contrary, the claim is allowed in full.

Loss of rent - \$2,500. The landlord submitted evidence showing that he was able to find new tenants to move in to the rental unit on December 15, 2012 and claims loss of rent for the two and one-half months from October 1, 2012. If a fixed term agreement ends due to the tenant's breach of the agreement, section 7 of the *Act* makes the tenant responsible for the landlord's losses, subject to the landlord's duty to do whatever is reasonable to minimize the loss.

In the present matter, the landlord's evidence stated that, given the depressed state of the local market at the time, he had attempted both to sell and rent the property in his efforts to minimize the losses. However, I would note that the presence of a "for sale" sign in front of the rental unit is would be something of a deterrent to prospective tenants and potentially a benefit to the landlord by creating vacant possession in the event of a sale. Even with the landlord's property manager conveying his willingness to rent for a one-year fixed term, I believe some prospective tenants would prefer a potentially longer term tenancy and would have been dissuaded by the property being for sale. Therefore, I am reducing this claim by half and award \$1,250.

General cleaning - \$252. The landlord submitted a photograph and a receipt for \$563.42 in support of this claim, and requested the reduced amount after discounting for normal wear and tear. This claim is allowed in full.

Tenant placement fee - \$560. The landlord lives some distance from the rental unit and paid the claimed amount to a property management company to find the new tenants for December 15, 2012. While this is a cost the landlord would have encountered if the tenancy had run its full course, I find that the tenant's breach limited the landlord's options and that it was reasonable for her to anticipate some of this predictable cost. Therefore, I allow one-half of the claim which is \$280.

Utilities - \$259.49. The landlord has submitted receipts in support of this claim for maintaining the utilities in the rental unit for the period it remained empty. This cost to the landlord is attributable to the tenant's breach of the fixed term agreement and it is allowed in full.

Filing fee - \$50. As the landlord's application has substantially succeeded on its merits, I find that he is entitled to recover the filing fee for this proceeding from the tenant.

Security deposit – (\$461.55). As authorized by section 72 of the *Act*, I order that the landlord retain the security deposit in set off against the balance owed to him by the tenant.

Thus, I find that the tenant owes to the landlord an amount calculated as follows:

Unpaid rent	\$1,461.55
Loss of rent	1,250.00
General cleaning	252.00
Tenant placement fee	280.00
Utilities	259.49
Filing fee	<u>50.00</u>
Sub total	\$3,553.04
Less retained security deposit	- 461.55
TOTAL	\$3,091.49

Conclusion

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$3,091.49** for service on 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*.

Dated: April 16, 2013

Residential Tenancy Branch