



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF, O

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit, unpaid and/or loss of rent, damage or loss under the Act, regulations or tenancy agreement; and, authorization to keep the security deposit and pet deposit. The tenant did not appear at the hearing. The landlord testified that the tenant was served with the hearing documents and evidence in person by the bailiff on January 28, 2013 and that the bailiff provided an affidavit attesting to service. I was satisfied the tenant was served with the hearing documents and I continued to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Has the landlord established an entitlement to recover the amounts requested from the tenant?
2. Is the landlord authorized to retain the security deposit and pet deposit?

Background and Evidence

The tenancy commenced in August 2012 and the tenant paid a security deposit of \$600.00 and a pet deposit of \$200.00. The landlord subsequently returned \$100.00 of the pet deposit to the tenant when one of his dogs ceased to live on the property.

On December 19, 2012 the landlord was provided an Order of Possession pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent served upon the tenant in November 2012. The landlord was also provided a Monetary Order for loss of rent for the month of December 2012.

The landlord obtained a Writ of Possession and the bailiff returned possession of the unit to the landlord on January 8, 2013. The landlord re-rented the unit effective January 15, 2013.

The landlord is seeking to recover \$3,665.40 from the tenant for the following, as amended:

<u>Item</u>	<u>Description</u>	<u>Amount</u>
Loss of rent	January 1 – 14, 2013	\$ 541.94
Writ of Possession	Supreme Court of BC	120.00
Bailiff service	Expert Bailiff	500.00
Cost of certified cheque for bailiff	Royal Bank	20.00
Cleaning labour	Paid to cleaner and landlord's time	609.71
Repair of damage and locks	Various suppliers	1,696.05
Registered mail to serve Order of Possession and Monetary Order	Canada Post	10.10
Sub-total		\$3,497.80
Filing fee for this Application		50.00
Service of this Application and evidence using bailiff	Expert bailiff	117.60
TOTAL CLAIM		\$3,665.40

The landlord provided copies of supporting documents, including the tenancy agreement, receipts, and invoices, for all of the amounts claimed above, with the exception of the landlord's time spent cleaning.

The landlord submitted that the tenant left the rental unit extremely filthy and the landlord hired a cleaner as well as spent several hours of her own time cleaning the rental unit. The landlord contends that she actually spent more time cleaning than she is claiming. The landlord has photographs and video recordings to demonstrate the filthy condition of the rental unit, including mouldy food and dishes, dirty cupboards and surfaces, a pile of rotting soiled diapers, piles of dog hair, and baked on food on the oven.

With respect to the claim for damage, the submitted the following:

- the furnace and ducts/vents had to be sanitized of urine and mounds of dog hair;
- the dryer was packed with lint and the wiring was tampered with;
- the locks would not work and the tenant returned only one key;
- the battens of the wall panelling was removed or broken, taking 40 pieces of new batten to repair;

- the tenant's dogs and/or child destroyed the blinds and window screens by jumping at the windows or grabbing at the blinds;
- door knobs and door stops were removed; and,
- the bathroom fan and hood fan in the kitchen were broken or so filthy they were beyond cleaning and had to be replaced.

In addition to receipts and invoices, the landlord had photographs and video recordings to substantiate the damage caused to the rental unit.

I noted the landlord did not take into account depreciation of the items that were replaced; however, I noted that the landlord did not include a claim for labour to remove and replace the damaged fixtures. The landlord also submitted that most of the items that were replaced had been recently installed in 2011.

Analysis

Under the Act, a tenant is required to vacate a rental unit within 10 days after receiving a 10 Day Notice to End Tenancy for Unpaid Rent. In this case, the tenant did not do so and the landlord obtained an Order of Possession by way of a previous hearing the tenant attended. The tenant did not vacate the rental unit after the Order of Possession was served and the landlord had to obtain the services of a court bailiff to regain possession of the rental unit. I find the tenant's failure to comply with the terms of his tenancy agreement and the requirements of the Act resulted in the landlord incurring costs to regain possession of the rental unit by way of a Writ of Possession from the Supreme Court and the services of a court bailiff. Accordingly, I find the landlord entitled to recover the cost of the Writ of Possession and the court bailiff from the tenant and I award the landlord \$620.00 [\$120.00 + \$500.00] for this portion of her claim.

Upon consideration of the overwhelming and undisputed evidence as to the condition of the rental unit when possession was returned to the landlord I find the landlord entitled to recover all of the amounts claimed for cleaning and damage from the tenant. Although the landlord's claim for damage did not reflect a specific deduction for depreciation I find the replacement cost for certain items to be reasonable considering the landlord did not include any labour in the damage claim. Therefore, I award the landlord \$2,305.76 [\$609.71 + 1696.05] for cleaning and damage to the rental unit.

Having found the tenancy ended due to the tenant's violation of the tenancy agreement and the Act; considering the tenant continued to occupy in January 2013; and, the tenant left the rental unit unclean and damaged, I find the tenant's actions resulted in a loss of rent to the landlord for the first half of January 2013 as she submitted.

Therefore, I find the landlord entitled to recover loss of rent from the tenant for January 1 – 14, 2013 in the amount claimed of \$541.94.

I award the filing fee paid for this Application to the landlord; however, I make no award for banking fees, mailing costs or costs to serve documents to the tenant as such costs are not recoverable under the Act.

I authorize the landlord to retain the security deposit and pet deposit in partial satisfaction of the amounts awarded to the landlord and I provide the landlord with a Monetary Order for the balance calculated as follows:

Writ of Possession and court bailiff costs	\$ 620.00
Cleaning and damage	2,305.76
Loss of rent for January 1 – 14, 2013	541.94
Sub-total	\$ 3,467.70
Filing fee paid for this application	50.00
Less: security deposit and pet deposit	<u>(700.00)</u>
Monetary Order	\$ 2,817.70

To enforce the Monetary Order it must be served upon the tenant and it may be filed in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord has been authorized to retain the tenant's security deposit and pet deposit and has been provided a Monetary Order for the balance of \$2,817.70 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: May 16, 2013

Residential Tenancy Branch