



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC FF

Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord confirmed their intent on seeking money owed or compensation for damage or loss under the act regulation or tenancy agreement, by writing "*Landlord now claiming March rent and also April rent in lieu of notice. More rent may be claimed if the premises is not rented after April 30, 2013*" in the details of dispute on their original application

Based on the aforementioned I find the Landlord's intention of seeking to recover the payment for use and occupancy or loss of rent, for a period after the tenancy ended in accordance with the 10 Day Notice, was an oversight and/or clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application. Therefore I amend their application, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The Landlord testified that the Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on March 11, 2013, by registered mail. Canada Post receipts were provided in the Landlord's testimony. Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding, in accordance with the Act; therefore, I proceeded in the Tenant's absence.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included a copy of the 10 Day Notice to end tenancy for unpaid rent; the tenancy agreement; and a tenant ledger listing unpaid rent and utilities.

The Landlord confirmed that the Tenant entered into a fixed term tenancy that began on October 1, 2012, and was set to end twelve months later. Rent was payable on the first of each month in the amount of \$700.00 and no security deposit was paid.

The Landlord advised that as of February 28, 2013, the Tenant had accumulated a balance owing of \$2,211.73 in unpaid rent and utilities so he issued a 10 Day Notice and personally served it to the Tenant mid-day on March 1, 2013, at the rental unit. Later that day the Tenant moved out of the unit leaving some possessions behind. The Landlord requested that I provide him with information about abandoned possessions in my decision.

The Landlord testified that he had provided the Tenant with copies of all utility bills up to the end of February 2013, but has not provided copies of bills that arrived after that point because the Tenant had moved out.

The Landlord stated he was able to re-rent the unit effective May 1, 2013. The Landlord has applied for the unpaid amount of \$2,211.73 plus unpaid utilities for March and loss of rent for March 2013 and April 2013.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant received the 10 Day Notice on March 1, 2013, and vacated later the same day, ending the tenancy effective March 1, 2013, in accordance with section 44 of the Act.

The Landlord claimed unpaid rent and utilities of \$2,211.73 which was due February 28, 2013, in accordance with the 10 Day notice. The Tenant failed to pay rent and utilities in accordance with the tenancy agreement, which I find to be a breach of section 26 of the Act. Accordingly, I award the Landlord a Monetary Award for unpaid rent and utilizes in the amount of **\$2,211.73**.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

As noted above this tenancy was for a 12 month fixed term and was not scheduled to end until September 30, 2013. The tenancy ended due to the breach of the Tenant not paying rent and utilities which has cost the Landlord to suffer a loss of rent for March and April 2013. The Landlord re-rented the unit effective May 1, 2013. Therefore, I find the Landlord has met the burden of proof and I award them loss of rent for March and April 2013, in the amount of **\$1,400.00** (2 x \$700.00).

The Landlord has claimed for utilities for March 2013 and confirmed that he has not served the Tenant or the *Residential Tenancy Branch* with copies of those utility bills. Therefore, I find there is insufficient evidence to meet the burden to prove the actual amount claimed. Therefore, I dismiss this portion of the claim, without leave to reapply.

The Landlord has primarily been successful with their application; therefore, I award recovery of the **\$50.00** filing fee

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$3,661.73** (\$2,211.73 + \$1,400.00 + \$50.00). This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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 30, 2013

Residential Tenancy Branch

Abandonment of personal property

- 24** (1) A landlord may consider that a tenant has abandoned personal property if
- (a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or
 - (b) subject to subsection (2), the tenant leaves the personal property on residential property
 - (i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or
 - (ii) from which the tenant has removed substantially all of his or her personal property.
- (2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if
- (a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or
 - (b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.
- (3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.
- (4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

Landlord's obligations

- 25** (1) The landlord must
- (a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,
 - (b) keep a written inventory of the property,
 - (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and
 - (d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

- (2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that
 - (a) the property has a total market value of less than \$500,
 - (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or
 - (c) the storage of the property would be unsanitary or unsafe.
- (3) A court may, on application, determine the value of the property for the purposes of subsection (2).

