



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on February 14, 2013, by the Landlord to obtain a Monetary Order for; damage to the unit, site or property; for unpaid rent or utilities; to keep all or part of the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The Landlord submitted documentary evidence which indicates 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 February 19, 2013, by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the submissions of the Landlord I find the Tenant is deemed served notice of this proceeding on February 24, 2013, five days after it was mailed, in accordance with section 90 of the Act. As the Tenant is deemed served I proceeded in the Tenant's absence.

Issue(s) to be Decided

Should the Landlord be granted a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: 25 photos of the rental unit; her written submission; the tenancy agreement and addendums; the move in and move out inspection report forms; a written submission from the neighbor; an envelope mailed to the Landlord from the Tenant; receipts issued for rent; and the Landlord's itemized list of her claim.

The Landlord testified that the Tenant entered into a month to month tenancy that began on January 1, 2008. Rent was payable on the first of each month in the amount of \$675.00 and on January 31, 2008 the Tenant paid \$33750 as the security deposit.

The Landlord stated that the Tenant attended the move in inspection on January 31, 2008 however she kept the form and did not return it to the Landlord so a second copy was created and was not signed by the Tenant. The move out inspection was completed November 2, 2013, in the absence of Tenant as she abandoned the rental unit without notice.

The Landlord advised that sometime around November 1, 2012, she attempted to contact the Tenant to collect the past due rent for September and October, 2012. When she could not reach the Tenant the Landlord contacted the neighbor who told her the Tenant had moved out sometime around the 15th of October. On approximately February 11, 2013 the Tenant left a message for the Landlord indicating her forwarding address and requesting the return of her security deposit.

The Landlord submitted that the Tenant vacated the rental unit without paying the past due rent, without providing proper notice, and she left the unit unclean and with some damage. The Landlord stated that the Tenant had delayed rent payments before and had always caught up on them so she was not initially concerned. As a result of the Tenant's actions the Landlord said she suffered the following losses which she is claiming here;

- \$2,025.00 for unpaid rent for September, October, and November 2012, (3 x \$675.00); and
- \$735.00 for repairs which were done by someone who owed the Landlord money. The Landlord did not provide receipts as proof the work was done and is seeking compensation based on the amount her contractor quoted for the work which was completed in exchange for his debt that was owed to the Landlord.

Analysis

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.

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord and corroborated by their witness' statement and evidence.

Section 26 of the Act stipulates that rent is payable in accordance with the tenancy agreement.

Section 45 of the Act stipulates that a tenant may end a month to month or periodic tenancy by giving the landlord notice to end the tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, and (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Upon review of the above, I find the Tenant abandoned the rental unit, ending the tenancy without notice, in breach of section 45 of the Act. She is also in breach of section 26 of the Act as she failed to pay rent for September, October, or November, 2012, as the Landlord did not find out she had vacated until November 1, 2012. Accordingly, I award the Landlord **\$2,025.00** in unpaid rent (3 x \$675.00).

In this instance, I find the Landlord has provided insufficient evidence to prove or verify the value of the damages and repairs claimed. The Landlord failed to provide invoices or receipts for the work which was done, and furthermore, the Landlord testified that the work had been based on a quote from someone who owed her money.

In an instance where a party is relying on estimates or an agreed upon quote for a contra or exchange for a debt owed, I would expect to see the Landlord provide a copy of the agreement, in writing, signed by all parties. For example, the Landlord has agreed to a cost of \$725.00 for repairs which is to be applied against a debt that is owed to her, yet there is no evidence to support this agreement was entered into. Accordingly, I find there to be insufficient evidence to prove her claim for damages and the claim is dismissed, without leave to reapply.

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

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

| | |
|--|--------------------------|
| Unpaid Rent for September, October, Nov. 2012 | \$2,025.00 |
| Filing Fee | <u>50.00</u> |
| SUBTOTAL | \$2,075.00 |
| LESS: Security Deposit \$337.50 + Interest \$5.06 | <u>- 342.56</u> |
| Offset amount due to the Landlord | <u>\$1,732.44</u> |

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$1,732.44**. 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 14, 2013

Residential Tenancy Branch