



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, OPB, MNR, MNDC, MND & FF

Introduction

A hearing was conducted by conference call in the presence of the applicants and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the Amended Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Tenant by mailing, by registered mail to where the Tenant resides. A search of the Canada Post tracking service indicates that she accepted service of the Amended Application for Dispute Resolution on April 19, 2013.

The hearing was scheduled to commence at 10:30 a.m. The female landlord was present and ready to proceed. She testified that her husband was present in the Small Claim court at that time dealing with a payment hearing involving the same tenant. I adjourned the hearing and asked her to contact her husband and asked that he join the telephone conference call. The female landlord contacted her husband by cellular phone and he called into the hearing at approximately 11:00 a.m. Both landlord were present for the remainder of the hearing which lasted a further 30 minutes. The male landlord advised that the tenant attended the Small Claims payment hearing that process it had completed.

I raised the issue as to whether I should proceed with the hearing given the conflict between the Small Claims court hearing and the Residential Tenancy hearing. The tenant did not request an adjournment prior to the date of the hearing. The landlord

attempted to contact the tenant by regarding whether she wished to re-schedule the residential tenancy hearing but the tenant failed to reply. The residential tenancy hearing is conducted by telephone conference call and the tenant had the opportunity to telephone the conference call number just as the male landlord had done. The tenant has vacated the rental unit and has not provided the landlord with an address. The landlords stated they wished to proceed with the hearing. In the absence of an adjournment request from the tenant I determined that it was appropriate to continue with the hearing.

The tenant has vacated the rental unit. It is no longer necessary to consider the landlord's application for an Order for Possession. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to A Monetary Order and if so how much?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on August 15, 2012. The rent was \$1200 per month payable on the first day of the month.

The tenant failed to pay the rent. On December 3, 2012 the landlord obtained an Order for Possession and a monetary order in the sum of \$3044.05.

The tenant made an application in Supreme Court and obtained a stay of the above orders until January 31, 2013.

On February 12, 2013 the landlord obtained a Writ of Possession from the Supreme Court of British Columbia.

The landlord produced an invoice from the Bailiff dated February 35, 2013 that indicates the total Fees, Disbursements & HST was \$1949.63. It shows the Tenant made a deposit of \$2500 and that the bailiffs had a trust balance of \$550.37. The landlords testified the bailiff charged additional fees but they failed to present any invoices to support this claim.

The landlords testified the tenant vacated the rental unit at the end of March.

Analysis - Monetary Order and Cost of Filing fee

The original Application for Dispute Resolution filed by the Landlords claimed \$5535.78. The landlord subsequently filed an Amended Application for Dispute Resolution that increased the claim \$6075. The landlords have filed a letter that purported to increase the claim to \$7632.81. The Amended Application for Dispute Resolution was the document that was served on the Tenant. I advised the landlord that I am limited to the claims contained in that document. With regard to each of the landlords' claims I find as follows:

1. The landlords claimed the sum of \$3050.07 for Court Bailiff fees. The landlords have presented one invoice only. It shows that the Bailiff received a deposit of \$2500 and charged the landlords \$1949.63 leaving a trust balance in favor of the landlords of \$550.37. It appears the landlords have mistakenly added the trust balance that is due to them from the bailiffs to the deposit they gave the Bailiff. Based on the evidence presented I determined the landlords are entitled to \$1949.63 for Bailiffs charges. The landlords alleged but failed to prove the Bailiffs made additional charges.
2. The Amended Application for Dispute Resolution claims \$525 for trip charges and \$25.90 for postal fees.. The landlords testified this was for disbursement charges for court filings and taxi expenses. I determined the landlords are entitled to \$273 for court filing fees. However I dismissed the claim for registered mailing fees in the sum of \$88.73 as this relates to the cost of

litigation which an arbitrator does not have the jurisdiction to award. I also dismissed the claim for taxi charges as this relates to the cost of litigation.

3. I determined the landlords are entitled to \$593.00 for the cost of the Fortis gas bill to the end of the tenancy.
4. I determined the landlords are entitled to \$303.01 for the cost of hydro until the end of the tenancy.
5. I determined the landlords are entitled to \$360 for the cost of shingles that were taken or disposed of by the Tenant.
6. The Amended Application for Dispute Resolution claims \$1100 for property damage. The evidence presented by the landlord contains an estimate for house damage at \$1945. I am satisfied based on the photographs and evidence presented that the landlord is entitled to the \$1100 contained in the Amended Application for Dispute Resolution.

I determined the landlords have established a claim against the tenant in the sum of \$4578.64. I granted the landlord a monetary order in the sum of \$4578.64 plus \$100 for reimbursement of the cost of the filing fee for a total of \$4678.64.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: June 05, 2013

Residential Tenancy Branch

