



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND, MNR, MNDC, FF

Introduction

This was an application by the landlord for a monetary order for loss of revenue and damages to the unit, inclusive of recovering the filing fee. The hearing was conducted by conference call.

The landlord participated in the hearing. The tenant did not attend although served with the application and Notice of Hearing sent by registered mail on April 30, 2013 to forwarding address provided by the tenant(s). The landlord provided proof of mail registration including the tracking number for the mail, purported to have been returned to the landlord as unclaimed or unaccepted. The landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to a monetary order in the amount claimed?

Background and Evidence

The undisputed testimony and evidence of the landlord is that the tenancy started October 01, 2012 as a fixed term tenancy to June 30, 2013, however, it ended March 13, 2013 when the tenant acted on the landlord's Notice to End Tenancy for Cause dated February 13, 2013 *with an effective date of March 31, 2013*. The rent payable was \$1400 per month. At the outset of the tenancy the landlord collected a security deposit of \$700 which was used to offset a previous Order of the Director. At the end of the tenancy the landlord and tenant conducted an inspection and an inspection report was completed and given to the tenant and was submitted into evidence. The landlord is claiming loss of revenue for April and May 2013 in the sum of \$2800.00, plus the late

fee for this amount. The landlord testified they have been previously awarded unpaid rent to March 31, 2013 and the rental unit was re-rented for June 2013.

The landlord provided document and photographic evidence the tenant caused some damage to the rental unit and left the unit insufficiently clean as to require additional cleaning and some resulting disposal of refuse – in the claimed sum amount of \$383.00.

The landlord also testified the tenant damaged the laminate flooring of the rental unit by causing some discernible scratches to the laminate in the living and dining room. The landlord provided photographs of scratches over 2 areas, each approximately (1) square foot. The landlord has not replaced the damaged areas to the flooring, for which they are claiming \$4800.00 for a complete replacement of the entire laminate flooring of the unit. The landlord testified they arrived at the cost for this claim having been provided a statement from an agent of the landlord whom purportedly consulted a flooring contractor and then reported the opinion of the contractor to the landlord. The landlord's agent also provided an option costing \$2000.00 to replace only the damaged portion and surrounding area of the flooring.

In addition the landlord claims unpaid electrical utility to the end of May 2013 in the aggregate of \$270.00. The landlord provided the tenancy agreement which states the tenant was to be responsible for utilities. The landlord testified the personal arrangement between all of the landlord's tenants (2) of all the residential property was that the subject tenants were to pay 60% of the monthly equal payment plan amount of \$150.17 for the electrical utility. The landlord's claim of \$270.00 *represents 60% of \$450.51 to the end of May 2013.* The landlord's total claim on application totals \$8253.00.

Analysis

Section 7 of the Act states as follows.

Liability for not complying with this Act or a tenancy agreement

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Under the *Act*, the party claiming damage or a loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following test as prescribed by the provisions of **Section 7** of the act:

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, *solely, of the actions or neglect of the other party (the tenant)* in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The claimant must prove the existence of the damage and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the damage. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage incurred.

I accept the landlord's testimony and documentary evidence submitted as establishing that they incurred the amounts claimed for cleaning, refuse disposal, blind repair, and associated labour incurred in the total of **\$383.00**, and I grant the landlord this amount.

I find the landlord gave the tenant a Notice to End the tenancy in February 2013 and the tenant acted on that notice on or before the effective date of the notice of March 31, 2013. In the absence of evidence respecting the particulars for the tenancy's demise, and in the absence of any evidence from the landlord as to what efforts they made to mitigate losses of revenue, I find the tenancy effectively ended on the effective date of the landlord's Notice to End: March 31, 2013 and I find the landlord has already been compensated for rent up to the end of the tenancy, and is not entitled to additional unpaid rent. I therefore **dismiss** this portion of the landlord's claim, without leave to reapply.

On the face of the evidence and in the absence of receipts for the claimed damaged flooring or written estimates verifying the actual amount required to compensate for the claimed damage to the flooring, I find the landlord has not sufficiently met the test for damages. I find the landlord has, in the process, provided ambiguous evidence of how the landlord could mitigate their loss respecting solely making repairs to the scratched areas of the flooring. As a result, I find the landlord has not provided evidence to support their claim for \$2000.00 or \$4800.00. However, I accept the landlord has incurred a loss in the reduction of the value of the laminate flooring from the resulting scratches to 2 portions of the flooring, and I set that loss at **\$250.00**, without leave to reapply.

I accept the landlord's testimony the tenant is responsible for utilities in the claimed amount of 60% of total utilities for the residential property . As I have already determined the tenancy ended March 31, 2013, I find the landlord is entitled to 60% of electrical utilities for March 2013 of \$150.17. As a result, I grant the landlord **\$90.10** for electrical utilities, without leave to reapply.

As the landlord was partly successful in their claim, the landlord is entitled to recover a portion of their filing fee in the amount of \$50, for a total award of **\$773.10**.

Conclusion

I grant the landlord a Monetary Order under Section 67 of the Act for the amount of **\$773.10**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on both parties.

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: July 22, 2013



Residential Tenancy Branch

RTB-136

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.rto.gov.bc.ca) has information about:

- How and when to enforce an order of possession:
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:
Fact Sheet RTB-100: *Review Consideration of a Decision or Order* **(Please Note: Legislated deadlines apply)**

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca