



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR; MND; MNDC; MNSD; FF

Introduction

This is the Landlord's application for a Monetary Order for damages, unpaid rent and utilities; to retain the security deposit in partial satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenant.

The Landlord gave affirmed testimony at the Hearing.

The Landlord testified that the Notice of Hearing documents were mailed to the Tenants, via registered mail, to the Tenant's forwarding address on May 4, 2013. She stated that she also sent the Tenant copies of her documentary evidence by express letter. The Landlord provided copies of the registered receipts in evidence.

Based on the Landlord's affirmed testimony and documentary evidence, I am satisfied that the Tenant was duly served with the Notice of Hearing documents by registered mail. Service in this manner is deemed to be effected 5 days after mailing the documents. Despite being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Hearing proceeded in her absence.

It is important to note that the Tenant provided documentary evidence to the Residential Tenancy Branch on June 27, 2013, but the Landlord stated that she did not receive any documentary evidence from the Tenant. Therefore, because the Landlord did not receive it and the Tenant did not attend the Hearing, this evidence was not considered.

Issues to be Decided

- Is the Landlord entitled to a monetary award for unpaid rent and utilities, and for damage to the kitchen walls?

Background and Evidence

The rental unit is a suite in the basement of the Landlord's house. The Landlord lives on the upper floor. A copy of the tenancy agreement was provided in evidence. This tenancy began on May 1, 2011 and ended on April 23, 2013. Monthly rent was \$600.00, due on the first of the month. Utilities were not included. The Tenant paid a security deposit in the amount of \$300.00 at the beginning of the tenancy.

The Landlord gave the following testimony:

The Tenant gave notice to the Landlord on April 21, 2013, that she would be ending the tenancy on April 23, 2013. The Landlord seeks a monetary award for unpaid rent for the month of May, due to insufficient notice.

The Tenant was responsible to pay 1/3 of utilities (electricity and cable), and owes \$689.51 for utilities. The Landlord provided copies of utility bills and an electric billing history in evidence. The Landlord also seeks an additional \$50.00, which is what she estimates the final hydro bill will be.

The Landlord stated that the Tenant damaged the walls in the kitchen, leaving many small holes. The Landlord provided photographs in evidence.

The parties attended at the rental unit to complete a Condition Inspection Report at the beginning and the end of the tenancy. The Landlord provided a copy of the Report in evidence. The Tenant signed the Report, agreeing that the report fairly represents the condition of the rental unit at the beginning and the end of the tenancy. The Tenant also agreed that the Landlord could make the following deductions from the security deposit: "\$100.00 for wall damage, \$200.00 towards hydro/cable bills + additional amount for bills to be sent via bank draft".

Analysis

I accept the Landlord's undisputed testimony in its entirety.

Section 45 of the Act states that a Tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord received the notice, and is the day before the day in the month that rent is payable under the tenancy agreement. In order to be a valid notice, it must also comply with Section 52 of the Act and be in writing; be signed and dated by the tenant; give the address of the rental unit; and state the effective date of the notice.

Therefore, a valid notice to end the tenancy, which complies with the provisions of Section 52 of the Act, if given on April 21, 2013, would not have been effective until May

31, 2013. In this case, the Tenant did not provide a notice that complied with Section 52 of the Act and did not give the Landlord the required time pursuant to the provisions of Section 45.

I find that the Tenant did not provide due notice to end the tenancy and that the Landlord is entitled to a monetary award for unpaid rent for the month of May, 2013.

I accept the evidence provided that the Tenant agreed that the Landlord could deduct \$100.00 from the security deposit for the damage to the walls. This part of the Landlord's claim is also granted.

The Landlord provided copies of 23 internet/cable bills and two electric billing histories. These bills span the period between the beginning and the end of the tenancy.

The Landlord testified that the Tenant owes a total of \$1,139.51 for utilities since the beginning of the tenancy, but acknowledged in her documentary evidence:

“[the Tenant] claims to have paid 2 amounts in cash. One for \$450.00 & one for \$200.00. Since I forgot to give her receipts for those times, I have agreed to deduct \$650.00 from the total owed.

1339.51
– 650.00
698.51 Total amount currently owing + part of next hydro bill.”

The Landlord's accounting calculations are confusing and go back to the beginning of the tenancy which spanned nearly two years. Section 7 of the Act allows a landlord compensation for damage or loss resulting from a tenant failing to comply with a term of the tenancy agreement, however it also requires that landlord to do whatever is reasonable to minimize that loss. The Landlord did not make application for a monetary award for unpaid utilities until the end of the tenancy. I find that the Landlord did not minimize her loss. However, the Tenant agreed on the Condition Inspection Report to pay \$200.00 from the security deposit for “hydro/cable bills”. Therefore I allow this portion of the Landlord's claim in the amount of \$200.00.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of the Landlord's monetary claim. No interest has accrued on the security deposit.

The Landlord has been largely successful in her application and I find that she is entitled to recover the cost of the \$50.00 filing fee from the Tenant.

I hereby provide the Landlord with a Monetary Order, calculated as follows:

Unpaid rent	\$600.00
Wall damage	\$100.00
Unpaid utility bills	\$200.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$950.00
Less security deposit	<u>- \$300.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$650.00

Conclusion

I hereby provide the Landlord with a Monetary Order in the amount of **\$650.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: July 29, 2013

Residential Tenancy Branch