



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Green Mountain Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF, SS

Introduction

This is an application filed by the Landlord for an order allowing for the service of documents or evidence in a different way than required by the Act, and if allowed, a monetary claim for damage to the unit, site or property, for unpaid rent or utilities, for money owed or compensation for damage or loss, to keep all or part of the pet damage and/or the security deposits and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary. The Landlord had applied for permission for substitute service of the notice of hearing and evidence via the Tenant's emergency contact information. I find pursuant to Section 71 of the Residential Tenancy Act that the service of the notice of hearing and evidence submitted is sufficiently served for the purposes of this hearing. The Tenant has voiced no concerns regarding the service of documents.

At the end of the hearing, the Tenant, S.H. provided a PO Box number in Merritt, B.C. for service of this decision as she is of no fixed address. This file shall be amended to include this PO Box address for service.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the pet damage and/or security deposits?

Background and Evidence

This Tenancy began on June 1, 2013 on a fixed term tenancy until May 31, 2014 as shown by the submitted copy of the signed tenancy agreement. Both parties have confirmed that the Tenant has vacated the rental unit. The Landlord states that the Tenant vacated the rental unit between August 2 to 5, 2013 and the Tenant disputes this stating that the Tenants vacated the rental unit in mid-July. The monthly rent was \$950.00 payable on the 1st of each month and a pet damage deposit of \$475.00 and a security deposit of \$475.00 were paid on May 12, 2013.

Both parties agreed that the Tenants were served with a 10 day notice to end tenancy issued for unpaid rent dated July 2, 2013 by posting it to the rental unit door. The Tenant, S.H. states that she was not served, but acknowledged that her partner, C.W. who she still resides with did receive the Landlord's entire package. Both parties agreed that the notice states that \$1,900.00 in rent was due on July 1, 2013 (which consists of June rent of \$950.00 and July rent of \$950.00). The Tenant acknowledged in her direct testimony that no rent was paid for June and July 2013, but disputes the Landlord's claims for loss of rental income for August and September 2013.

The Landlord seeks a monetary claim of \$4,695.00. This consists of \$3,800.00 for the unpaid rent of \$1,900.00 (June and July 2013) and the loss of rental income of \$1,900.00 (August and September 2013). The Landlord states that the Tenants left the rental unit damaged and in an unsuitable to be re-rented. The Landlord has provided as confirmation photographs of the rental unit at the end of the tenancy. The Tenant disputes the Landlord's claims stating that no condition inspection reports for the move-in or the move-out were completed. The Landlord disputes this stating that a condition inspection report for the move-in was completed and a witness existed that could confirm this. The Landlord did not submit a copy of the completed condition inspection report or provide a witness to support these claims. The Landlord seeks \$185.00 for the cost of broken door, \$95.00 for the replacement of a kitchen cabinet door, \$45.00 for 1 gallon of paint, \$480.00 for 2 people to clean 12 hours each at the rate of \$20.00 per hour and \$90.00 for the cost of a truck. The Tenant disputes these claims. The Tenant has provided no comment on the broken door, that the kitchen cabinet doors were broken at the beginning of the tenancy and that the Tenant herself re-painted the kitchen cabinet doors at the end of the tenancy. Both parties confirm that the Tenant was provided some paint and re-painted some of the kitchen cabinet doors.

Analysis

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Tenant has conceded in her direct testimony that no rent was paid for June and July of 2013 totalling, \$1,900.00. As such, this portion of the Landlord's claim is granted.

As for the Landlord's claim for the loss of rental income, I find based upon the direct testimony of the Landlord that a claim has not been established for the amount claimed. However, I find on a balance of probabilities in the absence of any comparable evidence, ie. condition inspection reports for the move-in or the move-out or that of a witness and find that the Landlord is entitled to a nominal award of \$475.00 which is equal to two weeks compensation for loss of rental income. I rely on the photographs submitted by the Landlord that do show a state of un-cleanliness and that there is limited damage to the rental unit. The Landlord has failed to provide sufficient evidence of damage and loss, specifically the amounts claimed for expenses. The Landlord in part has stated that some work has not yet been completed, has not provided any invoices/receipts for any work done or any details of specifics regarding expenses of an actual amount. The remaining portions of the Landlord's claim for damages are dismissed.

The Landlord has established a total monetary claim of \$2,375.00 which consists of unpaid rent and loss of rental income. The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$950.00 combined pet damage and security deposits in partial satisfaction of the claim and I grant a monetary order for \$1,425.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted a monetary order for \$1,425.00.
The Landlord may retain the pet damage and security deposits.

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: October 18, 2013

Residential Tenancy Branch

