



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND; MNR; MNSD; MNDC; FF

Introduction

This is the Landlord's application for a Monetary Order for damages and unpaid utilities; compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Landlord testified that he mailed the Notice of Hearing documents and copies of his documentary evidence to the Tenant, by registered mail, on September 13, 2013. The Landlord provided the tracking number for the registered mail.

The Tenant testified that she sent copies of her documentary evidence to the Landlord by registered mail on October 19, 2013. The Landlord acknowledged receipt of the Tenant's documents.

Issues to be Decided

- Is the Landlord entitled to compensation for unpaid utilities and loss of revenue for May and June, 2013; and for the cost of repairing a wall and taking garbage to the dump?
- May the Landlord apply the security deposit in partial satisfaction of his monetary award?

Background and Evidence

On May 30, 2013, the Landlord obtained an Order of Possession and Monetary Order for unpaid rent up to and including April, 2013.

On June 13, 2013, the Tenant filed an Application for Review Consideration, which was dismissed.

On October 28, 2013, the Tenant's application to change the Monetary Order granted on May 30, 2013, was dismissed. The Arbitrator noted that the Tenant may have also wished to apply for rent abatement, but that claim was not clearly set out in the Tenant's application. The Tenant was given leave to re-apply for an Order reducing past rent.

This tenancy began on June 1, 2012. Monthly rent was \$1,050.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$525.00.

The Tenant testified that she moved out of the rental unit on April 30, 2013. The Landlord stated that the Tenant moved out on May 1, 2013, and returned the keys on May 5, 2013.

The Landlord's witness PC testified that he arrived at the rental unit at 1:00 p.m. on May 1, 2013, to find a moving truck at the rental unit. He took down the license number of the moving truck and followed the truck to the Tenant's new address.

The Landlord's witness JL testified that on May 1, 2013, he saw a moving truck with two men moving furniture at the rental unit.

The Landlord's witness BB testified that he called the Landlord on May 1, 2013, because he was a moving company at the rental unit.

The Tenant's witness RN testified that the Tenant moved in the early morning of April 29, 2013. She stated that the Tenant did not use a moving company and that she rented a UHaul. RN stated that she returned the key to the Landlord on May 1, 2013, by placing it in his mail box.

The Tenant testified that she was in India at the time the Notice to End Tenancy was issued. She stated that the Landlord told her she could move any time and that she moved at the end of April, 2013. The Tenant stated that the City sent papers to the Landlord on April 19, 2013, ordering the Landlord to remove the suite because it was not legal.

The Landlord testified that the City ordered him to remove the stove from the rental unit and that the stove was removed in June, 2013.

The Tenant stated that the only damage to the rental unit was some marks on the wall from a TV that was mounted. She stated that the rental unit was clean, but that she was prepared to pay the dump fees. The Tenant testified that the Landlord did not provide a bill for the water and sewer.

Analysis

To prove a loss and have the Tenant pay for the loss requires the Landlord to satisfy four different 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 Tenant in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the testimony of both parties, I find that the Tenant provided vacant possession of the rental unit on May 1, 2013, and therefore the Landlord is entitled to loss of revenue for the month of May, 2013, in the amount of **\$1,050.00**.

I find that the Landlord did not provide sufficient evidence that he took reasonable steps to mitigate his loss of revenue for the month of June, 2013. He did not provide evidence of any attempts made to re-rent the rental unit for June, 2013, and in fact testified that the stove was removed in June on Order of the City. This portion of his application is dismissed.

The Landlord did not provide copies of bills for utilities. Therefore I find that he did not satisfy elements 1, 2, or 3 of the test above. This portion of his application is dismissed.

Based on the testimony of both parties, I find that the Landlord is entitled to the cost of repairing the wall and removing the garbage. However, the Landlord did not provide sufficient documentary evidence of the cost to do so (for example, a receipt for the dump fees or the cost of materials and labour to fix the wall). Therefore, I allow a nominal award for these two items in the total amount of **\$50.00**.

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

The Landlord's application had merit and I find that he 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:

Loss of revenue for May, 2013	\$1,050.00
Nominal amount for repairs and dumping garbage	\$50.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,150.00
Less security deposit	<u>- \$525.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$625.00

Conclusion

I hereby provide the Landlord with a Monetary Order in the amount of **\$625.00** 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: November 14, 2013

Residential Tenancy Branch