



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlord applied for a monetary order for unpaid rent, for authorization to keep all or part of the security deposit, and to recover the filing fee.

An agent for the landlord (the "agent"), the tenant, the spouse of the tenant, and an interpreter for the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties presented their evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

On October 18, 2013, the hearing was adjourned to allow the tenant time to pick up the registered mail package. On December 10, 2013, the hearing reconvened and the parties confirmed that they both had received evidence from the other party and that they had the opportunity to review that evidence prior to the reconvened hearing. As a result, I find the parties were sufficiently served under the *Act*.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

The parties agreed that a fixed term tenancy began on July 1, 2012, and reverted to a month to month tenancy after June 30, 2013. The parties agreed that the tenant vacated the rental unit on July 12, 2013. According to the written tenancy agreement, monthly rent was \$2,300.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$1,150.00 at the start of the tenancy, which the landlord continues to hold. The agent stated that parking of \$25.00 per month was

added to the monthly rent; however a parking fee is not listed in the written tenancy agreement.

The landlord has applied for a monetary claim of \$2,475.00, comprised of \$2,300.00 in unpaid rent for the month of July 2013, \$25.00 in unpaid parking for July 2013, \$25.00 for an NSF fee related to cheque that the tenant placed a “stop payment” on, \$25.00 for a late fee, and \$100.00 for cleaning costs, which is comprised of four hours of cleaning at \$25.00 per hour.

During the hearing, the tenant confirmed that a “stop payment” was placed on the rent cheque for July 2013 rent. The parties also agreed that the landlord received the tenant’s 1 Month Notice to End Tenancy on June 7, 2013. The effective date of the 1 Month Notice is July 31, 2013. The tenant vacated the rental unit on July 12, 2013 without paying rent for the month of July 2013 to the landlord. Section 10 of the tenancy agreement, entitled “Arrears” indicates that any late rent payments are subject to a late fee of \$25.00, and any NSF (Non-Sufficient Funds) cheques are subject to a \$25.00 NSF fee.

The parties agreed that the landlord received the tenant’s written forwarding address on July 7, 2013. The tenancy ended on July 12, 2013, when the tenant vacated the rental unit, and the landlord applied to claim towards the tenant’s security deposit on July 15, 2013.

Regarding the cleaning costs being claimed by the landlord, the landlord submitted a condition inspection report in evidence. A total of six photos were also submitted in evidence.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;

2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Landlord's claim for unpaid rent, NSF fee and late fee – There is no dispute that the tenant placed a “stop payment” on the July 2013 rent cheque, and that the tenant has failed to pay July 2013 rent as a result. Section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*. As a result, **I find** the tenant failed to pay \$2,300.00 in rent for the month of July 2013. Therefore, **I find** the landlord has met the burden of proof and is entitled to **\$2,300.00** in compensation for unpaid rent for the month of July 2013. **I find** that the landlord is also entitled to **\$25.00** for the NSF fee for the cheque that the tenant placed a “stop payment” on, and **\$25.00** for the late fee for July 2013 rent which has not been paid by the tenant.

I do not accept that \$25.00 was owed by the tenant for parking, as the written tenancy agreement does not support that a parking fee was agreed to by the parties at the start of the tenancy. Therefore, **I dismiss** the landlord's claim for the \$25.00 parking fee for July 2013 due to insufficient evidence, without leave to reapply.

Landlord's claim for cleaning costs – The landlord submitted a condition inspection report that I find was not completed correctly by the landlord. I find the way the landlord completed the condition inspection report to be confusing and ultimately does not support that the rental unit required cleaning at the end of the tenancy. Furthermore, I find the photos submitted in evidence do not support that the rental unit was left “dirty” by the tenants and actually support that the rental unit was left reasonably clean as

required by section 37 of the *Act*. Based on the above, **I dismiss** this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

As a majority of the landlord's claim had merit, **I grant** the landlord the recovery of their filing fee in the amount of **\$50.00**.

Monetary Order – I find that the landlord has established a total monetary claim in the amount of **\$2,400.00**, comprised of \$2,300.00 for unpaid July 2013 rent, \$25.00 for the July 2013 NSF fee, \$25.00 for the July 2013 late fee, plus \$50.00 for recovery of the filing fee. The landlord continues to hold the tenant's security deposit of \$1,150.00 which has accrued \$0.00 in interest since the start of the tenancy. The landlord applied for dispute resolution on July 15, 2013, which is within the required timeline under section 38 of the *Act* when claiming towards the tenant's security deposit.

I ORDER the landlord to retain the tenant's full security deposit of \$1,150.00 in partial satisfaction of the landlord's \$2,400.00 monetary claim. **I grant** the landlord a monetary order pursuant to section 67 of the *Act* in the amount of **\$1,250.00** for the balance owing by the tenant to the landlord. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The landlord has established a total monetary claim of \$2,400.00 as described above. The landlord has been ordered to retain the tenant's full security deposit of \$1,150.00 in partial satisfaction of the landlord's \$2,400.00 monetary claim.

The landlord has been granted a monetary order pursuant to section 67 of the *Act* in the amount of \$1,250.00 for the balance owing by the tenant to the landlord. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* in both the English and Traditional Chinese languages with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 19, 2013

Residential Tenancy Branch

