



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR; MND; MNSD; FF

Introduction

This is the Landlord's application for a Monetary Order for unpaid rent and damages; 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 and copies of her documentary evidence were mailed to the Tenant, via registered mail, to the Tenant's forwarding address on October 11, 2013. The Landlord provided a copy of the receipt and tracking numbers 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 his absence.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

The Landlord gave the following testimony:

A copy of the tenancy agreement was provided in evidence. This tenancy began on July 15, 2013, for a fixed term ending July 16, 2014. Monthly rent is \$1,095.00, due the first day of each month. The Tenant paid a security deposit in the amount of \$747.50, which the Landlord is holding.

On October 1, 2013, the Tenant sent an e-mail to the Landlord indicating that he had to leave on October 2, 2013, due to a family matter. The Tenant's bank would not honour the Tenant's cheque for October's rent because the Tenant closed the account.

The Tenant did not clean the rental unit at the end of the tenancy and left food in the fridge, garbage in the rental unit and abandoned furniture. The Tenant promised the Landlord that he would have his cousin pick up his bed, TV and personal items but the cousin didn't show up.

The Landlord had a baby on October 6, 2013, and was unable to take care of re-renting the rental unit herself, so she hired an agent. The agent charged her \$547.00 to re-rent the rental unit, \$100.00 for cleaning charges and \$100.00 for dump fees. A copy of the agent's invoice was provided in evidence.

The Tenant did not pay the strata moving fee of \$75.00. The Tenant knew about the fee because he was provided with the Strata bylaws at the beginning of the tenancy and it was pointed out to him on his Application form that he would have to pay a move out fee at the end of the tenancy. The Landlord had to pay the fee as owner of the rental unit.

On October 6, 2013, the Landlord's agent placed ads on-line for the rental unit and had some showings before successfully renting the rental unit in the middle of November, effective December 1, 2013, for the same rent.

Analysis

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

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 7(2) of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

I find that the parties entered into a one year term tenancy and that the Tenant did not comply with Section 45(2) of the Act when he ended the tenancy. I find that the Landlord suffered a loss as a result of the Tenant's breach of the Act and that she attempted to mitigate her loss by advertising the rental unit for rent in a timely fashion.

Therefore, I allow the Landlord's claim for unpaid rent for the month of October, 2013, and loss of revenue for the month of November, 2013, in the total amount of **\$2,190.00**.

The Landlord seeks to recover the cost of her agent's fees in securing a new tenancy. The tenancy agreement does not include a liquidated damages clause. I find that the cost of re-renting the rental unit is the cost of doing business and therefore I dismiss this portion of the Landlord's claim.

I find that the Tenant did not leave the rental unit reasonably clean at the end of the tenancy, contrary Section 37(2) of the Act. The Landlord provided a receipt confirming the amount she was charged for cleaning and dumping fees. Therefore I allow this portion of her claim in the total amount of **\$200.00**.

I find that the Landlord did not provide sufficient evidence to support her claim in the amount of \$75.00 for move-out fees. The Landlord did not provide a copy of the strata bylaws, or a Form K signed by the Tenant acknowledging receipt of the bylaws. The Landlord did not provide a copy of the strata invoice for the move-out fee, or proof that she had paid the invoice. Therefore, this portion of her claim is dismissed.

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

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

Conclusion

I hereby provide the Landlord a Monetary Order for service upon the Tenant, in the amount of \$1,692.50 calculated as follows:

Unpaid rent and loss of revenue for October and November, 2014	\$2,190.00
Cost of cleaning the rental unit and disposing of Tenant's garbage	\$200.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$2,440.00
Less security deposit	<u>- \$747.50</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$1,692.50

This Monetary 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: January 17, 2014

Residential Tenancy Branch

