



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent, compensation for damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on November 10, 2013 he personally served the tenant copies of the Application for Dispute Resolution and Notice of Hearing, at the rental unit. The agent lives in the same building as the rental unit and knew the tenant. Service occurred at 1:10 p.m.; the agent had a friend, H.E., with him as a witness.

These documents are deemed to have been served in accordance with section 89 and 90 of the Act; however the tenant did not appear at the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$1,100.00 for unpaid November 2013 rent?

Is the landlord entitled to compensation in the sum of \$2,500.00 for bailiff fees?

May the landlord retain the security deposit?

Is the landlord entitled to filing fee costs?

Background and Evidence

The landlord stated the tenancy commenced in September 2012 for a fixed term ending September 30, 2013. The tenant was to vacate the unit at the end of the fixed term.

Rent was \$1,100.00 per month, due on the first day of each month. A deposit in the sum of \$550.00 was paid.

On October 23, 2013 the landlord was issued an Order of possession and a monetary Order for unpaid October 2013 rent. The tenancy was found to have ended on October 14, 2013. The decision issued via the Direct Request Proceeding process on October 23, 2013 indicated the terms of the written tenancy agreement.

The tenant remained in the rental unit and did not pay November 2013 rent; the landlord has claimed compensation in the sum of \$1,100.00.

The landlord supplied a copy of a December 5, 2013 invoice issued by a bailiff service that was hired to enforce a Writ of Possession. The landlord paid \$2,939.13 to have the tenant's personal property removed and placed in storage. The eviction occurred on December 3, 2013. The landlord has claimed the cost of the bailiff service, but underestimated the fee at the time the application was made.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In the absence of evidence to the contrary, I find that the landlord suffered a loss of November 2013 rent revenue as the result of the tenant over holding beyond the end date of the tenancy; October 14, 2013 Therefore, pursuant to section 65 of the Act, the landlord is entitled to compensation in the sum of \$1,100.00.

I find, from the evidence before me that the tenant over held beyond the effective date of a Notice ending tenancy and that as a result of his breach of the Act, the landlord incurred bailiff costs. The landlord was entitled to possession of the rental unit and the tenant failed to vacate. Therefore, I find that the landlord is entitled to compensation in the sum of \$2,500.00 for bailiff services; the sum claimed on the application.

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$550.00, in partial satisfaction of the monetary claim.

I find that the landlord has established a monetary claim, in the amount of \$3,650.00, which is comprised of damage or loss under the Act and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order for the balance of \$3,150.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to compensation for loss of November 2013 rent revenue and the cost of bailiff services as claimed.

The landlord may retain the security deposit.

The landlord is entitled filing fee costs.

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: February 20, 2014

Residential Tenancy Branch

