



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MND, MNSD, FF

Introduction

This hearing was scheduled in response to an application by the landlord for a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / retention of the security deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy was from October 1, 2012 to September 30, 2013. Monthly rent of \$800.00 is due and payable in advance on the first day of each month, and a security deposit of \$400.00 was collected. A move-in condition inspection report was completed with the participation of both parties.

In response to a previous application by the landlord, a hearing was held on June 11, 2013. Pursuant to a decision issued by that same date, an order of possession and a monetary order were issued in favour of the landlord. In part, the monetary order reflected the landlord's entitlement to compensation for unpaid rent for May and June 2013, and certain unpaid utilities.

It appears that while the order of possession was served by way of posting on the unit door in June 2013, the tenants had effectively vacated the unit by the end of May 2013. The landlord testified that some of the tenant's possessions had been left behind in the unit, including a bookshelf, mattress and sofa. During the hearing the tenant testified that the landlord is at liberty to dispose of these items.

While the tenant testified that the unit keys would no longer enable access to the unit in late May or early June 2013, the landlord testified that it was not until July when

she undertook to change locks on the unit. Ultimately, there is no dispute that the tenant did not return the unit key, the mail box key or the remote control for the garage door. The landlord has not advertised for new renters and has not presently decided whether or not she will re-rent the unit.

While the tenant claims compensation for certain tools stored at the unit which have allegedly gone missing, the tenant has presently not filed an application for dispute resolution.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.rto.gov.bc.ca

The attention of the parties is drawn to the following particular sections of the Act:

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

Based on the documentary evidence which includes photographs and receipts, as well as the affirmed and sometimes conflicting testimony of the parties, the various aspects of the landlord's application and my findings around each are set out below.

\$2,400.00 (3 x \$800.00): *unpaid rent / loss of rental income for July, August and September 2014.*

Section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement:**

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In the absence of any efforts undertaken by the landlord to mitigate the loss of rental income by advertising for new renters after the end of this tenancy, this aspect of the application is hereby dismissed.

\$339.77: *gas and hydro utilities*

In view of the apparent overlap between the period of time at issue for payment of utilities, and the period of time at issue for compensation sought in relation to unpaid rent / loss of rental income, as above, and in view of the absence of clarity around what period of time was addressed in the previously issued monetary order which reflected the landlord's entitlement to certain unpaid utilities, this aspect of the application must be dismissed.

\$260.00: *cleaning and dumping of refuse*

Section 37 of the Act addresses **Leaving the rental unit at the end of a tenancy**, in part:

37(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property

In the absence of a move-out condition inspection report, I find that the landlord has established entitlement limited to **\$130.00**, or half the amount claimed.

\$360.45 (\$150.00 + \$30.45 + \$180.00): *locksmith services, replacement of keys and garage remote control*

I find that as the tenants failed to return all keys and a remote control issued at the start of tenancy, the landlord has established entitlement to the full amount claimed.

\$725.00: *repairs to window, door and door case wall*

In the absence of a move-out condition inspection report, I find that the landlord has established entitlement limited to **\$362.50**, or half the amount claimed.

\$50.00: *filing fee*

As the landlord has achieved a measure of success with the application, I find that she has established entitlement to recovery of the full filing fee.

\$400.00: *security deposit*

The disposition of the security deposit has already been decided in the decision issued by date of June 11, 2013.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$902.95** (\$130.00 + \$360.45 + \$362.50 + \$50.00). Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court, 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: February 18, 2014

Residential Tenancy Branch

