



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MND, MNSD, MNDC, MNR, FF
For the tenant: MNSD

Introduction

This was the reconvened hearing dealing with the parties' respective applications for dispute resolution under the Residential Tenancy Act (the "Act").

The tenant applied for a monetary order for a return of his security deposit.

The landlord applied for authority to retain the tenant's security deposit, a monetary order for unpaid rent, damage to the rental unit and for money owed or compensation for damage or loss, and for recovery of the filing fee

This hearing began on December 10, 2013, was attended by the tenant, the landlord, and her agent/spouse, and dealt only with issues surrounding the service of the parties' respective applications.

An Interim Decision was entered on December 16, 2013, should be read in conjunction with this Decision and further, it is incorporated herein by reference.

The parties were informed at the original hearing that the hearing would be adjourned in order to consider the issues contained in the parties' respective applications; the landlord was ordered to substitutionally serve the tenant with her application for dispute resolution by attaching the documents to the tenant's door, with proof that she had done so and the tenant was ordered to serve his application for dispute resolution on the landlord by registered mail or leaving it with the landlord.

At this reconvened hearing, the landlord and her agent attended; the tenant did not attend the telephone conference call hearing.

The landlord sent in photographic evidence that she had complied with the order of December 16, 2013, showing that the dispute resolution documents were attached to the tenant's door on January 19, 2014.

Based upon the evidentiary submissions of the landlord, I find that the tenant was served with the landlord's application and evidence as required by the Interim Decision of December 16, 2013, and this hearing proceeded on the landlord's application in the tenant's absence.

The landlord was provided the opportunity to present her evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-As the tenant failed to attend the reconvened hearing, and failed to submit proof that he had served the landlord with his application for dispute resolution, pursuant to section 10.1 of the Rules, I dismiss the tenant's application, without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit, to further monetary compensation, and to recover the filing fee?

Background and Evidence

This tenancy began on May 1, 2013, monthly rent was \$860, and the tenant paid a security deposit of \$430.

The parties have previously been through the dispute resolution process prior to the present applications at least two other times.

The landlord filed an application under the direct request process (file # 248786) and in a Decision dated May 17, 2013, another Arbitrator granted the landlord a monetary order for unpaid rent of \$860 for May 2013, and an order of possession for the rental unit, effective two days after service upon the tenant.

The tenant filed an application for review consideration in file # 248786, and that application was dismissed on May 27, 2013, by still another Arbitrator, wherein he confirmed the Decision and order of possession for the rental unit and monetary order awarded to the landlord on May 17, 2013.

On September 23, 2013, a hearing on the tenant's application for dispute resolution for the costs of emergency repairs and monetary compensation, file # 249043, was convened, and the tenant was awarded compensation of \$120 by yet another Arbitrator in a Decision dated September 23, 2013.

In the landlord's application before me, the landlord's monetary claim is \$2149.54, as follows:

Unpaid rent for May 2013	\$55
Unpaid rent for June 2013	\$30
Unpaid rent for July 2013	\$860
Hydro bill	\$74.26
Water bill	\$34.34
Document fee/Writ of possession	\$160
Bailiff service	\$435.94
Cost to repaint	\$200
Cost for damage to the rental unit	\$200
Cleaning and garbage removal	\$100

The landlord's relevant documentary evidence included a copy of a written tenancy agreement, showing that the landlord will cover half of the hydro bill up to \$80 and the water bill up to \$40, copies of photographs of the walls in the rental unit showing the tenant's painted writings, copies of utility bills, a receipt for payment of the filing the order of possession in the Supreme Court of British Columbia in order to obtain a Writ of Possession, and a bailiff's receipt for their fee in evicting the tenant.

There was not a move-in or move-out condition inspection report.

In support of her application, the landlord and her agent submitted that the tenant failed to pay the full amount of rent for May 2013, leaving a rent deficiency of \$55. The tenant failed to vacate the rental unit pursuant to the order of possession for the rental unit, and failed to pay the full amount of rent for June, with a deficiency of \$30, according to the landlord.

The landlord submitted that the tenant again failed to vacate the rental unit pursuant to the order of possession awarded to the landlord in file #248786, requiring the landlord to file the order of possession in the Supreme Court in order to obtain a Writ of Possession, and that they in turn were required to hire a bailiff to evict the tenant.

The tenant was evicted on July 15, 2013, by the bailiff and therefore according to the landlord, they are entitled to unpaid rent for July and to recover the costs of evicting the tenant.

The landlord submitted that the tenant failed to pay for their utility costs, as set out in the tenancy agreement, and that he is therefore responsible for reimbursing the landlord.

The landlord submitted that the tenant wrote all over the walls and cabinets and that it was necessary to repaint the walls, as shown in their photographic evidence. The landlord stated that she and her spouse provided the materials and labour in repainting the rental unit.

The landlord submitted that the tenant damaged the walls by punching holes as big as a human fist, committed other damage, and left garbage in the rental unit, which was necessary to repair and remove.

The landlord stated that she and her spouse repaired the damage and removed the garbage.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Unpaid rent for May 2013-I find the landlord submitted sufficient undisputed evidence that the tenant failed to pay the full amount of rent for May 2013, in the amount of \$55. I therefore grant the landlord a monetary award of \$55.

Unpaid rent for June and July-It is clear that the landlord obtained an order of possession for the rental unit on May 17, 2013 through dispute resolution and that the order of possession was confirmed on May 27, 2013, after the tenant had filed an application for review consideration.

I find that the tenant failed to vacate the rental unit by the end of May, staying until July 15, 2013, when a bailiff evicted the tenant.

Under section 57 of the Act, a landlord may claim compensation from a tenant who overholds in the rental unit after a tenancy has ended. I therefore find the landlord is entitled to compensation from the tenant who overheld in the rental unit beyond May 2013, in the amount of \$30 for June, as claimed by the landlord, and \$430, which is one half of July, when the tenant was evicted on July 15.

I therefore grant the landlord a monetary award of \$460.

Hydro bill and Water bill-I find the landlord submitted sufficient undisputed evidence that the tenant was responsible for paying a portion of the utilities as set out in the written tenancy agreement, and that the tenant failed to pay that portion, which was verified in the utility bills submitted by the landlord.

I therefore grant the landlord a monetary award of \$74.26 for the hydro bill and \$34.34 for the water bill.

Bailiff fees and court document fees- I find that court document fees for the Supreme Court of British Columbia and Court Bailiff costs are recoverable costs incurred by the landlord during the tenancy due to the tenant's failure to vacate the rental unit despite being ordered to do so, and I am satisfied that the landlord has established that claim through testimony and evidence in the amount of \$435.94 for the bailiff fees and \$160 for the court document fee. I therefore award the landlord monetary compensation in that amount.

Repainting-I accept the landlord's photographic evidence that the tenant wrote over the walls and cabinets with paint and that it was necessary to repaint the rental unit. The landlord failed to supply proof of the costs of repainting and the time spent in repainting; however I find a reasonable amount to be \$100 and I award the landlord this amount.

Damages, cleaning and repainting- A key component in establishing a claim for damage is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Residential Tenancy Act deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me the landlord has failed to meet her obligation under of the Act of completing the inspections resulting in extinguishment of the landlord's right to the tenants' security deposit. There is also no independent record of the condition of the rental unit at the start and end of the tenancy.

In the absence of any other evidence, such as the condition inspection reports or photographs prior to and after the tenancy, I do not accept the landlord's claim for damages and cleaning to the rental unit.

I therefore find the landlord has submitted insufficient evidence to prove her claim for damage, cleaning and garbage removal and those claims are dismissed.

I allow the landlord recovery of the filing fee of \$50.

Due to the above, I find the landlord is entitled to a total monetary award of \$1369.54, comprised of unpaid rent for May of \$55, loss of rent revenue for June and July for \$460, \$74.26 for the hydro bill and \$34.34 for the water bill, \$435.94 for the bailiff fees and \$160 for the court document fee, repainting for \$100, and the filing fee of \$50.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord's application for monetary compensation is granted in large part.

At the landlord's request, I direct her to retain the tenant's security deposit of \$430 in partial satisfaction of her monetary award of \$1369.54 and I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$939.54, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

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 10, 2014

Residential Tenancy Branch

