



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNDC, 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, damage to the rental unit, to retain the security deposit, compensation for damage and loss under the Act and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

On November 29, 2013, pursuant to section 71 of the Act, a Substituted Service Order which provided the landlord with the authority to serve the tenant notice of the hearing via a manner the Director considers necessary, was issued as part of this application. The landlord was provided with approval to serve the tenant via the tenant's father's address that had been provided to the landlord during the tenancy.

The landlord could not recall the date he had sent the tenant the Notice of hearing package, but said he had done so within 3 days of November 29, 2013. The landlord was asked to submit a copy of the registered mail receipt; he did so almost immediately.

The receipt indicated that on November 29, 2013 service to the tenant was made via registered mail to the tenant's father's address. The landlord said that the mail was returned to him and marked by Canada Post as unclaimed.

The landlord provided a Canada Post receipt for registered mail sent on January 31, 2014 to the tenant's father's address. That mail included the landlord's evidence package. That mail was also returned to the landlord, marked by Canada Post as unclaimed.

As the landlord has obtained an Order for substituted service, and service has been completed in compliance with that Order, I find that the tenant has been served in accordance with sections 71 and 89 of the Act and, effective 5 days after service of each registered mail package, the tenant was sufficiently served with Notice of the hearing and the evidence. Refusal to claim registered mail does not allow a party to avoid service.

The landlord said that he provided a copy of the tenancy agreement as evidence; only 1 page of the agreement was before me. The landlord was asked to submit a copy of the tenancy agreement signed by the parties; that was supplied with the proof of service documents.

The landlord's monetary claim indicated on the application was reduced by the value of the security deposit, therefore; as this is a clerical error and the detailed calculation of the claim clearly sets of the claim, I find that the total monetary claim is no more than \$3,393.53.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$2,600.00 for unpaid rent plus \$518.53 in unpaid utilities?

Is the landlord entitled to compensation in the sum of \$275.00 for NSF fees and repairs?

May the landlord retain the security deposit?

Is the landlord entitled to compensation for damage or loss under the Act?

Is the landlord entitled to filing fee costs?

Background and Evidence

The landlord supplied copies of 2 tenancy agreements. The first was a 1 year fixed term tenancy that ended on January 24, 2013.

The 2nd tenancy agreement commenced on March 1, 2013 and was to end effective August 31, 2013. The tenant was to vacate at the end of this fixed term. Rent was \$1,500.00 per month, due on the 1st day of each month. Water was the only utility included with the rent.

The initial tenancy agreement indicated that on February 14, 2012 a security deposit was paid. The tenancy agreement signed on February 28, 2013 did not include payment of a security deposit.

The tenant vacated on August 30, 2013, at the end of the fixed term, as he was required to do. A forwarding address was not supplied by the tenant.

The landlord said that condition inspection reports were completed and given to the tenant; copies were not supplied as evidence. The rental unit was new at the start of the initial tenancy.

The landlord has made the following claim:

Unpaid rent	\$2,600.00
Utilities	518.53
Repairs	175.00
NSF fees X 2	50.00
TOTAL	\$3,343.53

The landlord included a claim for unpaid rent during 2012, up to the end of the 2nd tenancy. From March 2013, the start of the 2nd tenancy, the tenant failed to pay:

- \$750.00 in April
- \$750.00 in June; and
- \$700.00 in August 2013.

During this time the tenant made an additional payment in the sum of \$500.00; reducing the amount owed from March 2013 to August 2013 to \$1,700.00.

The landlord supplied a copy of 2 cheques, returned from the bank as NSF. One was issued on September 15, 2013 in the sum of \$1,150.00; the 2nd was issued on September 30, 2013 in the sum of \$1,000.00. These were posted-dated and given to the landlord at the end of the tenancy. The landlord said the tenant promised to pay the balance of rent arrears by electronic transfer. The landlord has claimed a \$50.00 fee for each NSF cheque as set out in the addendum supplied as evidence.

The landlord supplied copies of electrical bills from April 2012 to July 1, 2013 in the sum claimed. The bill to February 24, 2012 was in the sum of \$153.31 and the bill to February 28, 2013 was \$142.14. The tenant did not pay the utility costs and told the landlord that as other tenants in the building were not paying for hydro he should not have to pay. The landlord had to keep the bills in his name but would email copies of the bills to the tenant.

The landlord said that the tenant made an excessive number of holes in the walls from hanging art work, perhaps a total of fifteen holes in the 1 bedroom unit. The wall holes had to be repaired. The door knobs on a closet and deck were loose. The landlord said that the tenant should pay to repair the door knobs, but had no evidence that any neglect had occurred, outside of the fact that the unit had been new when the tenant moved into the unit in 2012. The tenant removed the battery from the smoke detector and the cover was missing. A new smoke detector had to be purchased. An electrical plate cover was broken and had to be fixed.

The landlord supplied a copy of a September 3, 2013 invoice in the sum of \$105.00 for repairs completed. The repairs were itemized, but only a total charge for services was indicated.

The tenant did not clean the carpets at the end of the tenancy; on September 2, 2013 the landlord had the carpets cleaned. An invoice in the sum of \$70.00 was supplied as evidence. The landlord said that the carpets were too dirty and could not be fully cleaned.

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 relation to the monetary claim I find that I may only consider the costs that relate to the last tenancy agreement signed by the parties. The tenancy that commenced in 2012 ended effective January 24, 2013; any claim related to that tenancy should be made separately. Combining claims that relate to individual tenancies requires

individual applications for dispute resolution. The landlord is at liberty to submit an application claiming costs for any previous tenancy.

Therefore, I have considered the portions of the claim made for the period of time commencing March 1 2013 when the 2nd fixed term tenancy agreement was signed.

Residential Tenancy Branch policy suggests that an arbitrator may award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. In the absence of an invoice that set out the costs incurred for each repair, I have provided nominal compensation in the sum of \$40.00 for the smoke detector and outlet cover; I have accepted the landlord’s testimony those items were missing and damaged.

A tenant is allowed to make a reasonable number of holes in the wall for art; there was no evidence before me that the tenant had made an excessive number of holes. There was no evidence before me that there was any more than a need for tightening the 2 door knobs, something that would constitute routine maintenance of a property. Therefore, the balance of the claim for repairs is dismissed.

I accept the landlord’s affirmed testimony that the tenant did not leave the carpets reasonably clean and find that the landlord is entitled to the carpet cleaning costs verified by the invoice.

I find that the landlord is entitled to utility costs in the sum of \$223.08 from March 2013 to the end of the tenancy; the balance of the claim is dismissed. Copies of utility bills verified the amounts claimed; the tenancy agreement required the tenant to pay this cost.

In accordance with section 7 of the Residential Regulation Regulation an NSF cheque fee may not exceed \$25.00. As the term in the addendum exceeds the allowable amount, I find that term is not enforceable and the claim for NSF fees is dismissed,

Therefore, the landlord is entitled to the following compensation:

	Claimed	Accepted
Unpaid rent	\$2,600.00	\$1,700.00
Utilities	518.53	223.08
Repairs	175.00	40.00
NSF fees X 2	50.00	0
TOTAL	\$3,343.53	\$1,963.08

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

In relation to the deposit, I find that the tenancy agreement that commenced on March 1, 2013 did not include payment of a security deposit. The tenancy agreement supplied as evidence was absent any indication of payment. Therefore, I find that any deposit held by the landlord is in relation to the previous tenancy.

I find that the landlord has established a monetary claim, in the amount of \$2,013.08, which is comprised of unpaid rent, utilities, repairs and the \$50.00 filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of \$2,013.08. 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.

The balance of the claim is dismissed.

Conclusion

The landlord is entitled to compensation as set out above.

The landlord is entitled to 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: March 24, 2014

Residential Tenancy Branch

