



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0945254 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on April 18, 2014, by the Landlord to obtain a Monetary Order for: damage to the unit, site or property; for unpaid rent or utilities; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord. The Landlord submitted that the Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and their evidence, on April 16, 2014, by registered mail. Canada Post receipts and the tracking information showing the Tenant's signed to receive the package on April 27, 2014, were provided in the Landlord's evidence. Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding; and I proceeded in the Tenant's absence.

Issue(s) to be Decided

Has the Landlord proven entitlement to a monetary award?

Background and Evidence

The evidence included a copy of the signed tenancy agreement which confirmed the Landlord's testimony that the Tenant entered into a fixed term tenancy that commenced on September 1, 2012 and was scheduled to end on August 31, 2014. The Tenant was required to pay rent of \$3,000.00 on the first of each month and on or before September 1, 2012, the Tenant paid \$1,500.00 as the security deposit. The parties conducted a walk through inspection and completed condition inspection report forms at move in September 1, 2012.

The Landlord testified that when the Tenant failed to pay the March 1, 2014 rent he was in contact with him on a regular basis to try and collect the rent. Then on approximately March 10, 2014, the Tenant told the Landlord that he would be moving out by the end of the month. On March 20, 2014, the Landlord found that the Tenant had abandoned the rental property leaving it damaged, scattered with debris, and unclean.

The Landlord now applies for monetary compensation of \$6,035.64 which consists of the following:

\$3,000.00	Unpaid rent for March 2014
\$50.00	Late payment fee for March 2014 as per clause # 4 in the tenancy agreement. The Landlord pointed to the front page of the tenancy agreement where it states that if there is a conflict with the <i>Residential Tenancy Act</i> , then "the Act shall prevail"; therefore, he agreed to claim \$25.00 for the late payment fee.
\$98.48	Unpaid municipal water and sewer utilities for January and February 2014 as per the invoice provided in evidence
\$2,336.00	Repairs and cleaning of the rental property as per the detailed invoice provided in evidence dated April 10, 2014
\$451.16	Dumpster bin rental as per invoice dated March 21, 2014
\$100.00	Filing fee

The Landlord stated that not only had the Tenant left the property damaged, he had run illegal natural gas lines to the house, without written permission and without a permit, which had to be removed. The Landlord noted that all repairs were detailed on his contractor's invoice provided in evidence.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord and corroborated by their evidence.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

The evidence supports the Tenant failed to pay rent that was due on March 1, 2014. Accordingly, I award the Landlord compensation for unpaid March 2014 rent of **\$3,000.00**.

Section 5 of the Act provides that landlords and tenants may not avoid or contract out of this Act or the regulations. Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Section 7 of the Regulations stipulates that a landlord may charge a non-refundable administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent; if the tenancy agreement provides for that fee.

Based on the foregoing, I find the Landlord may only claim a \$25.00 late payment fee and not \$50.00. As the evidence supports the Tenant was late paying March 2014 rent, I award the Landlord compensation of **\$25.00**.

The tenancy agreement clause # 5 stipulates that *"The Tenant is responsible for all utilities and services ..."* The evidence supports the Tenant failed to pay the municipal water and sewer utilities for January and February 2014. Accordingly, I award the Landlord compensation for unpaid utilities in the amount of **\$98.48**.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Based on the aforementioned I find the Tenant has breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean, scattered with debris and with some damage at the end of the tenancy.

As per the foregoing I find the Landlords have met the burden of proof and I award them damages in the amount of **\$2,787.16** (\$2,336.00 + \$451.16).

The Landlord has succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee.

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Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid March 2014 Rent	\$3,000.00
Late payment fee for March 2014	25.00
Unpaid utilities	98.48
Damages	2,787.16
Filing Fee	<u>100.00</u>
SUBTOTAL	\$6,010.64
LESS: Security Deposit \$1,500.00 + Interest 0.00	<u>-1,500.00</u>
Offset amount due to the Landlord	<u>\$4,510.64</u>

Conclusion

The Landlord has been awarded a Monetary Order for **\$4,510.64**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia 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: August 15, 2014

Residential Tenancy Branch

