



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MND, MNSD, MNDC, FF

Introduction

This was an application by the landlord for a monetary order for damage or loss and to recover the filing fee. The hearing was conducted by conference call.

The landlord participated in the hearing. The tenant did not attend although served with the application and Notice of Hearing sent by registered mail. The landlord testified they sent the registered mail, inclusive of all evidence on May 07, 2014 and that it was received May 27, 2014. The landlord provided proof of mail registration including the tracking number for the mail, purported to have been returned to the landlord.

Issue(s) to be Decided

Is the landlord entitled to a monetary order in the amount claimed?

Background and Evidence

The undisputed testimony and evidence of the landlord is that the tenancy started February 01, 2013 and ended April 30, 2014 by way of a Notice to End dated March 31, 2014, claimed by the landlord to have been received April 02, 2014. Rent payable was \$750.00 per month. At the outset of the tenancy the landlord collected a security deposit of \$375.00 which they retain in trust. At the end of the tenancy the tenant declined to conduct a mutual condition inspection, therefore the landlord completed an inspection report in their absence.

The landlord testified that the respondent tenant actually moved out March 28, 2014; ~~however, they requested the landlord's rental agent to allow access to a purported~~

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#RTB-136 (2011/07)



family friend to continue in the unit to the end of the tenancy. While awaiting approval from the landlord they gave access keys to the purported family friend. Within the first week of April 2014 the same individual became victim of a gun shooter as they were entering the common entrance of the residential property. During this occurrence the shooter also fired several rounds into the glass entry door with resulting damage to the door: at a cost to the *property manager* of the residential property in the sum of \$695.80 inclusive of new lettering on the glass door. The landlord seeks recovery of the door damage costs as the victim of the shooting was a guest of the tenant and person allowed on the property by them at the time of the shooting incident.

The landlord further claims the tenant caused the landlord costs respecting the rental unit. The landlord seeks cleaning costs of \$180.00, \$150 for 3 damaged window blinds, \$99.75 for carpet cleaning, \$100.00 for debris removal, and \$84.70 for deadbolt replacement and accompanying keys. In addition, the landlord seeks unpaid rental charges in the sum of \$59.84 from September 2013. In total the foregoing claims amount to \$674.29 for which the landlord provided evidence in support for them.

Analysis

In this matter the burden of proving claims of loss and damage rests on the claimant (landlord) who must establish, on a balance of probabilities that they have suffered a loss due to the tenant's neglect, or failure to comply with the Act. And, if so established, did the landlord take reasonable steps to mitigate or minimize the loss. **Section 7** of the Act outlines the foregoing as follows:

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.

Effectively, the landlord must satisfy each component of the test below:

1. Proof the loss exists,
2. Proof the damage or loss occurred *solely because of the actions or neglect of the Respondent in violation of the Act or agreement*

3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to minimize the loss or damage.

The landlord bears the burden of establishing their claim by proving the existence of the loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant. Once established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to mitigate the losses that were incurred. In this matter, and particularly in respect to the door damage costs as a result of the shooting incident, I find the landlord has not shown that the tenant was negligent, or that the tenant's non-compliance with the *Act* resulted in the landlord's loss; or, how the entire event was or would have been foreseeable by the tenant. I find the landlord has not met the test for damage and loss in respect to the costs associated with the shooting incident and resulting door damage, and therefore **I dismiss** the landlord's claim of \$695.80 in this regard, without leave to reapply.

I accept the landlord's testimony and documentary evidence submitted as establishing that they incurred the balance of claims totalling \$674.29 and that they are entitled to compensation in that amount. The landlord is also entitled to recover the \$50.00 filing fee for a sum award of **\$724.29**.

Conclusion

I Order that the landlord retain the deposit of \$375.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the *Act* for the balance due of **\$349.29**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: September 03, 2014

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