



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND; MNR; MNDC; MNSD

Introduction

This is the Landlord's application for a Monetary Order for damages and unpaid rent; compensation for damage or loss under the Act, regulation or tenancy agreement; and to apply the security deposit towards partial satisfaction of her monetary award.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlord served each of the Tenants with her Notice of Hearing documents, by registered mail, sent on September 26, 2014. Copies of the registered mail receipts and tracking numbers were provided in evidence. It was also determined that the Landlord served the Tenants with copies of her documentary evidence on January 6, 2015, by registered mail. The Landlord provided the tracking numbers for both of the packages and stated that the Tenant HR's package was returned. I find that both Tenants were served in accordance with the provisions of the Act.

The Tenants did not provide any documentary evidence.

Preliminary Matter

The Landlord's Application for Dispute Resolution indicates that she is seeking an award for unpaid rent. It was clarified that the Landlord is actually seeking compensation for loss of revenue for September 1 – 15, 2014.

Issues to be Decided

- Are the Landlords entitled to compensation for loss of revenue from September 1 to September 15, and for the cost of cleaning and repairing the rental unit?
- May the Landlords deduct their monetary award from the security deposit?

Background and Evidence

The Tenant RY began his tenancy in 2012. On May 1, 2013, the Tenants signed a new tenancy agreement with the Landlord, a copy of which was provided in evidence. This tenancy ended

on August 1, 2014. Monthly rent was \$1,270.00, due on the first day of each month. The Landlord is holding a security deposit and a pet damaged deposit, each in the amount of \$635.00, for a total on \$1,270.00.

The Landlord gave the following testimony and evidence:

The Landlord testified that the Tenants did not attend a move-out condition inspection that was scheduled for August 4, 2014. A copy of the Notice of Final Inspection Opportunity was provided in evidence. The Landlord testified that the rental unit and the yard were left in a "mess". She stated that the Tenants smoked in the rental unit, contrary to the tenancy agreement, so that she had to paint all of the walls. She testified that the Tenants' dogs clawed the doors and mouldings and that there was debris in the yard. The Landlord stated that the Tenants did not maintain the yard and that there was rotting food left in the fridge. The Landlord provided photographs of the rental property in evidence.

The Landlord testified that the Tenants changed the locks on the rental unit, without the Landlord's permission or knowledge, and did not provide the Landlord with the keys.

The Landlord testified that the Landlords live in another town and that they had to pay for accommodations while they were attending to repairing the damage left by the Tenants. In addition, the Landlords seek to recover the cost of traveling to and from their home to the rental unit.

The Landlords also seek compensation for loss of revenue. The Landlord testified that the new tenant painted the rental unit and in exchange was only charged ½ a month's rent for the month of September, 2014.

The Landlord provided copies of invoices in evidence. The Landlord seeks a monetary award in the amount of \$6,000.00, and provided the following approximate calculations:

Loss of revenue	\$635.00
Cost of materials for repairs	\$1,570.00
Cost of labour	\$3,400.00
Landlords' costs for fuel and lodging	\$2,800.00

The Tenant RY gave the following testimony:

The Tenant acknowledged responsibility for the cost of repairing a hole in the wall, the cost of cleaning the walls due to smoke damage, and abandoned garbage. He stated that "there was crap all over when I moved in", and that the yard had "lots of weeds and the grass was 6 feet tall" when he moved in. The Tenant stated that there were no door handles when he first rented the rental unit.

The Tenant acknowledged that the photographs were an accurate depiction of the state of the rental unit at the end of the tenancy; however, he stated that he did not remove the sink from the bathroom.

The Tenant testified that he paid the Landlord \$500.00 cash for fixing the door that the dogs had chewed.

The Landlord gave the following reply:

The Landlord acknowledged that the Tenant gave them \$500.00 to pay for some of the repairs. She also acknowledged that she had removed the sink and that she did not include that cost in her claim.

Analysis

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish her claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenants pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 37 of the Act provides:

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(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.

Section 67 of the Act provides that, if damage or loss results from a party not complying with the Act, I may determine the amount of, and order that party to pay, compensation to the other party.

Based on the testimony of both parties and the documentary evidence provided by the Landlord, I find that the Landlord is entitled to compensation for the Tenants' breach of Section 37 of the Act.

Some of the Landlord's documentary evidence (copies of invoices and receipts) are illegible and therefore, I have added the sums which are legible. I find that the Landlord has provided sufficient evidence to prove the following amounts:

Loss of revenue	\$635.00
Labour and materials to clean and repair damages	\$4,079.51
Less amount Tenants paid	<u>-\$500.00</u>
TOTAL award	\$4,214.51

I dismiss the Landlord's claim for the cost of accommodations and fuel. It is not the Tenants' responsibility to compensate the Landlord because they chose to rent out a property which is not where the Landlord lives.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security and pet damage deposits towards partial satisfaction of the Landlord's monetary award.

I hereby provide the Landlord a Monetary Order, calculated as follows:

Total monetary award	\$4,214.51
Less security and pet damage deposit	<u>- \$1,270.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$2,944.51

Conclusion

I hereby provide the Landlord with a Monetary Order in the amount of **\$2,944.51** for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: May 25, 2015

Residential Tenancy Branch

