



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MNSD, MND, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; for a monetary Order for damage; to keep all or part of the security deposit or pet damage deposit; and to recover the fee for filing this Application for Dispute Resolution. At the hearing the Landlord stated that she did not collect a security deposit and she withdrew the application to retain the security deposit/pet damage deposit.

The Agent for the Landlord stated that on November 07, 2014 she personally served the Tenant with the Application for Dispute Resolution, the Notice of Hearing, and eight pages of evidence the Landlord submitted to the Residential Tenancy Branch on November 03, 2014. She stated that these were served at the Tenant's place of employment and that service was witnessed by a third party. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

On November 17, 2014 the Residential Tenancy Branch received 34 photographs from the Landlord. The Agent for the Landlord stated that she believes these were submitted on November 03, 2014 when the Application for Dispute Resolution was filed. She stated that these photographs were served to the Tenant with the Application for Dispute Resolution on November 07, 2014. In the absence of evidence to the contrary, I find that these photographs have been served in accordance with section 88 of the *Act* and they were accepted as evidence for these proceedings.

Preliminary Matter

The Landlord has applied for a monetary claim of \$5,611.27. The Landlord did not submit a Monetary Order Worksheet however in the "Details of Dispute" the Landlord refers to an "attached list of monetary owing". In the document attached to the Application for Dispute Resolution the Landlord lists the following:

- transferred to the Landlord - \$2,000.00;
- transferred to the Landlord - \$1,000.00;
- cleaning supplies – \$45.85;
- locks/labour - \$87.53;
- kitchen supplies - \$9.50;

- refuse - \$28.50;
- truck diesel - \$40.00;
- refuse - \$21.00;
- carpet cleaning - \$105.00; and
- junk removal - \$386.40.

At the hearing the Landlord stated that the \$3,000.00 transferred to the Landlord does not form part of the Landlord's claim and she cannot explain why it was included on the aforementioned list. On the basis of the testimony of the Landlord, I find that the Landlord is not seeking compensation for the \$3,000.00 that was transferred to the Landlord and those amounts will not be considered at these proceedings.

Section 59(2)(b) of the *Act* stipulates that an Application for Dispute Resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. I find that the Landlord's Application for Dispute Resolution adequately informs the Tenant that she is seeking compensation for items listed in the bulleted list above, and those claims will be considered at these proceedings.

At the hearing the Landlord stated that she is also seeking the following compensation:

- \$3,750.00 in unpaid rent;
- \$750.00 security deposit that has not yet been paid;
- \$200.00 pet damage deposit that has not yet been paid; and
- \$150.00 for time she spent cleaning.

The Landlord acknowledged that the Application for Dispute Resolution does not declare that the Landlord is seeking to collect a security deposit/pet damage deposit that has not been paid. A security deposit/pet damage deposit is a deposit that is paid to the Tenant by the Landlord to be held for the duration of the tenancy. As this tenancy is over, I find that the Landlord is no longer entitled to collect a pet damage/security deposit and I will therefore not consider that claim at these proceedings.

The Landlord acknowledged that the Application for Dispute Resolution does not declare the amount of unpaid rent the Landlord is seeking, however she contends that the Tenant "knows how much rent she owes".

I find the claim for unpaid rent in the Application for Dispute Resolution does not comply with section 59(2)(b) of the *Act* as it does not clearly declare how much rent the Landlord is seeking. I find that it would be prejudicial to the Tenant to proceed with the Landlord's claim for unpaid rent, as the lack of detail regarding the amount of the claim makes it difficult, if not impossible, to prepare a response to the claim. I therefore decline to consider the claim for unpaid rent at these proceedings. The Landlord retains the right to file another Application for Dispute Resolution seeking compensation for unpaid rent.

The Landlord acknowledged that the Application for Dispute Resolution does not declare that the Landlord is seeking compensation of \$150.00 for time she spent cleaning the rental unit.

I find the claim for time spent cleaning does comply with section 59(2)(b) of the *Act* as it does not clearly inform the Tenant of the Landlord's intent to make this claim. I find that it Landlord's

failure to declare this claim makes it difficult, if not impossible, to prepare a response to the claim. I therefore decline to consider the claim for time spent cleaning the rental unit.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit?

Background and Evidence

The Landlord stated that:

- this tenancy began in June of 2013;
- the Tenant agreed to pay rent of \$750.00 by the first day of each month and \$750.00 by the fifteenth day of each month;
- the Tenant did not pay the required security deposit;
- a friend contacted her in May of 2014 and advised her that the rental unit appeared to be vacant;
- she believes the rental unit was vacated sometime in May of 2014, although she is not certain of the date;
- the Tenant did not provide the Landlord with notice of her intent to vacate the rental unit;
- the Landlord did not give the Tenant notice to end the tenancy; and
- the Tenant did not provide the Landlord with a forwarding address.

The Landlord is seeking compensation for cleaning in these amounts:

- cleaning supplies – \$45.85;
- cleaning supplies, which she referred to as kitchen supplies in her application - \$9.50;
- garbage disposal - \$49.50;
- fuel used to dispose of garbage - \$40.00;
- carpet cleaning - \$105.00; and
- company hired to dispose of garbage - \$386.40.

The Landlord stated that the Tenant left a large amount of garbage and personal items in the rental unit and that the unit needed significant cleaning at the end of the tenancy. The Landlord submitted photographs which the Landlord stated were taken after the rental unit had been vacated, which corroborate the Landlord's testimony that the rental unit required cleaning.

The Landlord is seeking compensation of \$87.53 to replace three locks in the rental unit, which she contends was necessary because the Tenant did not return the keys.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to leave the rental unit in reasonable clean condition and when she failed to return the keys to the rental unit.

In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage, whenever compensation is being claimed. In these circumstances, I find that the Landlord submitted insufficient evidence to establish the true cost of cleaning the rental unit, disposing of garbage/property left in the rental unit, and replacing the locks.

In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence, such as receipts, that corroborates the Landlord's testimony that she incurred these expenses. When receipts are available, or should be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to present the receipts.

As the Landlord has failed to establish the amount of her losses, I dismiss her claim for compensation for cleaning and changing the locks.

Although the Landlord submitted insufficient evidence to establish the true cost of her losses, I find that she has established that she suffered a loss as a result of the Tenant breaching the *Act*. I therefore find that her Application for Dispute Resolution has merit and that she is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord is entitled to recover the \$100.00 paid to file this Application for Dispute Resolution and I grant the Landlord a monetary Order for this amount. 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.

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: June 26, 2015

Residential Tenancy Branch

