



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on January 19, 2015 seeking 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 and or pet 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.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each party gave affirmed testimony and confirmed receipt of evidence served by the other. The Landlord noted that she did not receive the Tenant's evidence until June 3rd or 4th, 2015. The Landlord confirmed that she has had an opportunity to review the Tenant's evidence.

The Rules of Procedure # 3.15 provide that to ensure fairness and to the extent possible, the respondent's evidence must be organized, clear and legible. The respondent must ensure documents and digital evidence that are intended to be relied on at the hearing, are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing.

Based on the foregoing, I find the Tenant had served her evidence upon the Landlord within the required seven day period. Therefore, I considered all documentary evidence and oral testimony. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to a monetary order?

Background and Evidence

The undisputed evidence was that the parties entered into a written month to month tenancy agreement that began on September 18, 2014. Rent of \$1,000.00 was due on or before the first of each month plus \$60.00 internet charges and on September 18, 2014 the Tenant paid \$500.00 as the security deposit. No move in or move out condition inspection reports were completed.

The Landlord testified that when the Tenant failed to pay her January 2015 rent the Landlord served the Tenant with a 10 Day Notice to end the tenancy for unpaid rent. The Tenant vacated the property as of January 17, 2015. The Landlord stated that she received the Tenant's forwarding address on the Tenant's application which was filed to dispute the Notice. She said she received a different address from the Tenant on June 3, 2015.

The Landlord submitted that the Tenant left the suite very messy with old furniture and garbage left behind. As a result the Landlord had to hire a cleaning lady. The Landlord stated that she now seeks compensation for the January rent of \$1,000.00, January internet \$60.00, plus the \$500.00 damage deposit to cover her costs for cleaning, internet contract, the bounced January cheque, and the filing costs.

The Tenant testified that she had a verbal agreement with the Landlord that she would pay her rent by January 8, 2015 and despite that agreement the Landlord served her with the eviction notice and deposited her postdated cheque on January 12, 2015. She argued that she should not have to pay the NSF charges as the Landlord had agreed that she could pay her rent later.

The Tenant confirmed that she moved out January 17, 2015 and argued that she was told to pay or move out. She stated that there was no damage done to the rental unit and she cleaned the rental unit before leaving as supported by her photographic evidence. The Tenant asserted that it was herself who was with hardship given the circumstances and not the Landlord.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. 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.

- 7(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.

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 undisputed evidence in this matter was that the Tenant was required to pay rent plus internet charges of \$1,060.00 on or before the first of each month. The Tenant failed to pay the rent and internet charges on January 1, 2015 as required by her tenancy which caused the Landlord to suffer a loss of rent and internet charges for the month of January 2015. Accordingly, I grant the Landlord's application for unpaid January 2015 rent and internet charges of **\$1,060.00**.

Section 44(1)(a)(ii) of the Act provides that a tenancy ends on the effective date of a notice if the landlord gives notice to end the tenancy in accordance with section 46 of the Act for non-payment of rent.

Upon review of the evidence before me I find the postdated rent cheque which was being held in trust by the Landlord was issued for the sole purpose of rent payments during a tenancy. In this case I find the Landlord was not entitled to cash the January 1, 2015, postdated cheque on January 12, 2015, as the tenancy had ended on the effective date of the 10 Day Notice, which would have been January 12, 2015. Therefore, the Landlord is not entitled to compensation for the \$5.00 bank transaction charge, as submitted in her evidence. Accordingly, the claim for the \$5.00 bank charge is dismissed, without leave to reapply.

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

The Landlord has sought to retain the Tenant's security deposit of \$500.00 for cleaning costs, internet contract fees, and application fees. The Tenant disputed the Landlord's claims. Therefore, in the absence of a move out condition report or documentary evidence to prove the condition the rental unit was allegedly left in, I find the Landlord

submitted insufficient evidence to meet the burden of proof. Accordingly, I dismiss the Landlord's claims for damages, cleaning, and other costs, without leave to reapply.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has primarily succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

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:

January 2015 Rent and Internet	\$1,060.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,110.00
LESS: Security Deposit \$500.00 + Interest 0.00	<u>-500.00</u>
Offset amount due to the Landlord	<u>\$ 610.00</u>

Conclusion

The Landlord has primarily succeeded with her application and has been awarded \$1,110.00 which has been offset against the Tenant's security deposit leaving a balance owed to the Landlord of **\$610.00**.

The Landlord has been issued a Monetary Order for **\$610.00**. 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 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 17, 2015

Residential Tenancy Branch

