



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MNSD, 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; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on December 12, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord submitted to the Residential Tenancy Branch with the Application for Dispute Resolution were served to the Tenant, via registered mail. The Landlord cited a tracking number that corroborates this statement. 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.

The Landlord stated that on June 26, 2105 an amended Application for Dispute Resolution and a Monetary Order Worksheet were served to the Tenant, via registered mail, at the service address noted on the Application. In the absence of evidence to the contrary, I find that these documents have also been served in accordance with section 89 of the *Residential Tenancy Act (Act)*.

The Landlord stated that all documents were sent to the service address noted on the amended Application for Dispute Resolution.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent/ loss of revenue; NSF fees; costs associated to re-renting; and damage to the rental unit?

Is the Landlord entitled to retain all or part of the security deposit?

Background and Evidence

The Landlord stated that:

- the parties signed a fixed term tenancy agreement, which was submitted in evidence;
- the fixed term of the tenancy agreement began on November 01, 2014 and was to end on October 31, 2015;
- the Tenant agreed to move in early and to pay pro-rated rent for the month of October of 2014;
- the Tenant agreed to pay rent of \$1,025.00 by the first day of each month;
- the Tenant paid a security deposit of \$512.50;
- the Landlord did not schedule a time with the Tenant to complete a condition inspection report at the start of the tenancy;
- on December 04, 2014 the Tenant informed him, via text message that she intended to vacate the rental unit by "next week"; and
- the Tenant provided a forwarding address, via text message, on December 10, 2014.

The Landlord is seeking compensation for unpaid rent for December of 2014. He stated that the Tenant overpaid her rent for November by \$5.00, which he applied to unpaid rent for December. He stated that he has also received a cheque from a third part, in the amount of \$375.00, for rent for December of 2014. He is seeking the outstanding rent of \$645.00.

The Landlord is seeking \$50.00 in NSF fees. The Landlord stated that the Tenant tendered a cheque for partial payment of rent for October of 2014 and a cheque for partial payment of rent for November of 2014, both of which were returned due to insufficient funds. The addendum to the tenancy agreement, which was submitted as evidence, indicates that a \$25.00 fee is payable if a Tenant's cheque is returned. This addendum is signed by the Landlord but not the Tenant.

The Landlord is seeking compensation, in the amount of \$3.91, for a coat hook. The Landlord stated that the Tenant made two screw holes on a door and that he installed a coat hook on the door in order to cover one of the holes. He did not submit a receipt for the coat hook.

The Landlord is seeking compensation for the time he spent finding a new tenant for the rental unit, which he estimates was approximately four hours.

The Landlord is seeking compensation for the time he spent preparing for these proceedings, which he estimates was a little more than one hour, and the cost of mailing documents related to these proceedings to the Tenant.

Analysis

On the basis of the undisputed evidence, I find that the Tenant agreed to pay rent of \$1,025.00 by the first day of each month. Section 26 of the *Residential Tenancy Act* (Act) requires tenants to pay rent when it is due, even if they opt to vacate the rental unit prior to the end of the month. I therefore find that the Tenant was obligated to pay rent of \$1,025.00 for December of 2014.

On the basis of the undisputed evidence, I find that only \$380.00 in rent has been paid for December. I therefore find that the Tenant still owes the Landlord \$645.00 in rent for December of 2014.

I find that there is insufficient evidence to establish that the Tenant agreed to pay a fee for NSF cheques, as is required by section 7 of the *Residential Tenancy Regulation*. In determining that there was insufficient evidence to conclude that the Tenant agreed to this fee I was heavily influenced by the fact the addendum to the tenancy agreement has not been signed by the Tenant. As the Landlord has not established that the Tenant agreed to pay NSF fees, I dismiss the Landlord's application for NSF fees.

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.

In the absence of evidence to the contrary, I find that the Tenants damaged a door during this tenancy. In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant, whenever compensation for damages is being claimed. In these circumstances, I find that the Landlord failed to establish the true cost of repairing the damage to the door. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlord's statement that it cost \$3.91 to partially repair the door. 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. In the absence of a receipt, I award nominal damages of \$1.00 which is meant to simply acknowledge that the Tenant failed to comply with her obligation to repair damage.

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement, the fixed term of which ended on October 31, 2015 and that she did not comply with section 45(2) of the Act when she ended this tenancy prior to that date. I therefore find that the Tenant must compensate the Landlord for any losses the Landlord experienced as a result of the Tenant's non-compliance with the Act, pursuant to section 67 of the Act.

Specifically, I find that the Tenant must compensate the Landlord for the four hours he spent finding a new occupant. I find that \$25.00 per hour is reasonable compensation and that the Landlord is entitled to \$100.00 for time spent locating a new occupant.

With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow an Applicant to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the Landlord's claim for compensation for time spent preparing for these proceedings and for mailing costs, as they are costs which are not denominated, or named, by the *Act*.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$796.00, which is comprised of \$645.00 in unpaid rent, \$100.00 for time spent locating another occupant, \$1.00 in nominal damages, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the security deposit of \$512.50, in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$283.50. 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: July 15, 2015

Residential Tenancy Branch

