



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rentals Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order authorizing them to retain the security deposit. The hearing was originally set to take place on June 9 via telephone conference call. Both parties participated in the hearing on that date and the landlord advised that he had not been able to send his evidence to the tenant because although the tenant had given the rental unit address as his forwarding address at the end of the tenancy, Canada Post did not appear to be forwarding the mail. The tenant confirmed that the rental unit address was his forwarding address and confirmed that he had arranged for his mail to be forwarded. I granted an adjournment to permit the landlord opportunity to send his evidence to the tenant. At the hearing, I advised the parties that I would arrange for the Residential Tenancy Branch (the “Branch”) to send each party a copy of the notice of hearing and my interim decision at the addresses they confirmed at the hearing as their addresses for service. These documents were mailed to each party on June 10. Branch records show that on July 29, the tenant attended the Burnaby location of the Branch complaining that the landlord had not served him with a copy of the notice of hearing and interim decision. The Branch provided copies of both documents to the tenant on that date.

The hearing was reconvened on August 11 and while the landlord participated in the conference call hearing, the tenant did not. I found that the tenant had knowledge of the hearing as the notice of hearing and interim decision were sent to the address he provided on the first hearing date and he was also personally given copies of those documents on July 29. There was no evidence before me showing that the tenant requested an adjournment of the proceedings and an agent did not appear on his behalf to request a further adjournment. The hearing therefore proceeded in the absence of the tenant.

The landlord provided evidence to show that on June 17, he sent his evidence to the tenant via registered letter sent to the rental unit. This letter was returned by Canada Post as unclaimed. The tenant cannot avoid service by refusing to collect registered mail. I found that the landlord's evidence had been properly served as per the provisions of the Act and my instructions in the interim decision and the landlord's evidence was considered in my deliberations.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The landlord's undisputed evidence is as follows. The tenancy began on April 1, 2012 and ended on November 26, 2014. Rent was set at \$1,773.00 per month and the tenant paid a security deposit of \$886.50.

On November 17, the parties participated in a dispute resolution hearing and in a decision dated November 18, the landlord was granted an order of possession effective 2 days after service on the tenant and was permitted to retain \$50.00 from the security deposit. The landlord testified that he served the order of possession on the tenant and when the tenant did not vacate the rental unit 2 days later, he applied to the Supreme Court for a writ of possession. The landlord seeks to recover the \$120.00 cost of obtaining that writ.

The landlord testified that at the end of the tenancy, he found that the blinds were damaged. The landlord replaced the blinds, which were several years old, at a cost of \$420.79. The landlord seeks to recover this cost.

The landlord testified that the tenant failed to perform any cleaning whatsoever at the end of the tenancy and the landlord's cleaning staff spent 6 hours cleaning the unit. He seeks an award of \$136.00 for cleaning which represents \$16.00 for supplies and \$120.00 for labour at a rate of \$20.00 per hour.

The landlord testified that there were a number of marks on the walls of the unit at the end of the tenancy which in his opinion, went beyond what may be characterized as reasonable wear and tear. He testified that the unit had last been painted in March 2012 and provided evidence showing they spent \$420.00 to repaint the walls, trim and kitchen counter and cabinets. The landlord seeks to recover \$150.00 of this cost plus \$52.50 for supplies.

The landlord also seeks to recover the \$50.00 filing fee paid to bring this application.

Analysis

The *Residential Tenancy Act* (the “Act”) establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent’s action or inaction; and
3. Proof of the value of that loss.

I accept the landlord’s undisputed evidence. I find that the tenant failed to vacate the rental unit in accordance with the order of possession which was served upon him, which required the landlord to pursue a writ of possession. I find that by failing to comply with the order of the arbitrator, the tenant caused the landlord to suffer a compensable loss. I find that the landlord is entitled to recover the \$120.00 Supreme Court filing fee and I award the landlord that sum.

The tenant bore the obligation under the Act to leave the rental unit in reasonably clean and undamaged condition save reasonable wear and tear. In the absence of evidence to the contrary, I accept that the tenant failed to adequately clean the unit, he damaged the blinds and he damaged the walls. I find that the landlord suffered a compensable loss as a result and I award the landlord \$136.00 for cleaning, \$252.47 for the cost of replacement of blinds and \$202.50 as the cost of repainting the unit. I have discounted the award for the replacement of blinds as they were several years old and had already expended part of their useful life, which Residential Tenancy Policy Guideline #40 identifies as 10 years.

As the landlord has been successful in his claim, I find he should recover the \$50.00 filing fee paid to bring his application for a total entitlement of \$760.97.

In the November 18 decision through which the landlord obtained the order of possession, the arbitrator ordered that the landlord retain \$50.00 of the security deposit to compensate them for the cost of filing their application for the order of possession. This means the security deposit has been reduced to \$836.50. I order the landlord to retain \$760.97 from the security deposit in full satisfaction of their claim and I order them to return the balance of \$75.53 to the tenant. I grant the tenant a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court. As the tenant is refusing to

accept mail from the landlord, the landlord is not required to return this money to the tenant until the tenant serves them with a copy of the monetary order.

Conclusion

The landlord will retain \$760.97 from the security deposit and the tenant is granted a monetary order for the balance of \$75.53.

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: August 13, 2015

Residential Tenancy Branch

