



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 573697 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1501 in order to enable the tenant to connect with this teleconference hearing scheduled for 1430. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The agent is a shareholder of the landlord. A second agent of the landlord, SLP, attended the hearing late and was able to affirm as true all the evidence provided by the agent.

The agent testified that another agent of the landlord personally served the tenant with the dispute resolution package (including all evidence before me) on 14 March 2015. The agent testified that this service occurred at the tenant's partner's home. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package pursuant to section 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit

in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 15 September 2014. The parties entered into a written tenancy agreement that day. The tenancy was for an initial fixed term of 4.5 months to be followed by a tenancy on a month-to-month basis. Monthly rent of \$800.00 was due on the first of the month. The agent testified that the landlord continues to hold a security deposit in the amount of \$400.00, a pet damage deposit of \$200.00 and a key deposit of \$40.00, all which were collected at the beginning of the tenancy. The tenancy ended 28 February 2015 when the tenant abandoned the rental unit.

The agent testified that on 28 February 2015, an employee of the landlord saw the tenant moving out. The tenant told the employee that he was moving out. The employee told the tenant that he needed to provide notice. The agent testified that the tenant agreed to attend the rental unit on 1 March 2015 for a condition move out inspection.

I was provided with a copy of the condition move in and condition move out inspection report in respect of this tenancy. The condition move in inspection report notes that the patio door was previously damaged. The report notes that the blinds need replacing. The tenant signed this report on both 15 September 2014 and 1 March 2015 indicating that the report accurately summarizes the condition at both dates.

I was also provided with a condition move in and move out inspection report in respect of a previous tenancy with the same tenant for the same unit that began 1 June 2014 and ended 31 August 2014. The agent testified that the tenant previously occupied the rental unit with his mother. On 31 August 2014 the tenant and his mother vacated the rental unit. The tenant then found a new roommate and entered into this tenancy agreement commencing 15 September 2014. The agent testified that the tenant vacated completely and then moved back in. From this condition move in/out inspection report it appears that the damage to the patio door occurred at some point in the tenancy that commenced 1 June 2014, which is confirmed on a notation on the condition move in/out inspection report for the tenancy commencing 15 September 2014.

The agent testified that new tenants were secured for 1 April 2015. The agent testified that the rental unit was not posted for rent until the third week of March as it took some time to complete the repairs. The agent testified that he did not look for tenants for mid-month as in his experience the type of tenants that rent mid-month are “problem tenants”.

The agent testified that a blind was missing. The agent testified that the insect screen on the patio door was split and required replacement. I was not provided with any photographs of the damage.

I was provided with a receipt that indicates the cost of the replacement blinds. The replacement blind was \$45.88. I was provided with a receipt for labour installing the blind. The labour for the blind replacement was \$20.00. I was provided with a receipt for the labour fixing the patio exterior door. The receipt was for \$40.00. I was not provided with any receipt indicating cost of materials for the door repair.

The landlord claims for \$905.88:

Item	Amount
March Rental Loss	\$800.00
Damage to Patio Door	40.00
Damage to Blinds	65.88
Total Monetary Order Sought	\$905.88

Analysis

Subsection 45(1) of the Act sets out how a tenant may end a periodic tenancy:

A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date after the landlord receives the notice, and
- (b) is before the day in the month...that rent is payable under the tenancy agreement.

By failing to provide notice, the tenant breached the Act and his tenancy agreement. The earliest the tenant could have vacated the rental unit was 31 March 2015. The landlord submits that by failing to provide notice the tenant caused the landlord losses; in particular, the tenant caused the landlord a rental loss for March.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount

of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

I find that the tenant's breach of the Act caused the landlord to lose March's rent. I find that the amount of the loss was \$800.00, the tenant's rent under the tenancy agreement. I find that by advertising the rental unit as available for 1 April 2015, the landlord mitigated its losses. I accept the agent's uncontested testimony as to his experience with mid-month rentals. As such, the landlord has proven its entitlement to compensation for March's rent in the amount of \$800.00.

Subsection 32(3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Caused means that the actions of the tenant or his visitor logically led to the damage of which the landlord complains. Subsection 32(4) of the Act provides that the tenant is not responsible for making repairs for reasonable wear and tear.

The landlord claims for repair costs associated with a missing blind and a repair to an insect screen.

On the basis of the evidence provided by the landlord I accept that the blind was missing and required replacement. I was not provided with any evidence that would indicate that the replacement was required as a result of damage that constitutes wear and tear. The landlord has proven its entitlement to the replacement cost of the blind, that is \$65.88.

The agent testified that the insect screen was torn. The condition move in/out inspection report indicates that this damage occurred in a previous testimony. There was no attempt to collect an amount for the repair and the end of the first tenancy or any deduction made for the cost of its repair after the conclusion of the first tenancy. It is my conclusion that this indicates that the landlord did not initially view the damage as compensable. The landlord did not provide me with any photographs of the damage to the insect screen. Further, the landlord did not provide me with evidence that indicates that the damage constituted anything more than wear and tear. As such, I find, on a balance of probabilities, that the damage to the screen door is not compensable.

As the landlord has been successful in this application, it is entitled to recover its filing fee from the tenant.

The landlord applied to keep the tenant's deposits. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$275.88 under the following terms:

Item	Amount
March Rent Loss	\$800.00
Damage to Blinds	65.88
Offset Deposit Amount	-640.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$275.88

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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 subsection 9.1(1) of the Act.

Dated: August 17, 2015

Residential Tenancy Branch