



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on January 22, 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.

The hearing was conducted via teleconference and was attended by two agents for the Landlord, herein after referred to as Landlords. The application listed one corporate Landlord; therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise

The Landlords submitted evidence that the Tenant was served notice of this application and this hearing by registered mail on January 23, 2015. Canada Post tracking information confirmed that the Tenant signed for the registered mail on January 27, 2015.

Section 89(1)(c) of the *Act* stipulates that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to a landlord, if sent by registered mail must be given by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

Based on the submissions of the Landlord I conclude that the Tenant was sufficiently served Notice of this proceeding, in according with section 89 of the Act. Therefore, I proceeded in absence of the Tenant.

Issue(s) to be Decided

Has the Landlord proven entitlement to monetary compensation?

Background and Evidence

The Landlord submitted evidence that the Tenant entered into a written fixed term tenancy agreement that began on March 6, 2014 and switched to a month to month tenancy after September 30, 2014. Total rent of \$730.00 (\$715.00 + \$15.00 parking) was due on or before the first of each month and on March 5, 2014 the Tenant paid \$357.50 as the security deposit. A move in condition inspection report form was completed and signed by the Tenant on March 5, 2014. The move out condition report was completed in absence of the Tenant on January 13, 2015.

On December 3, 2014 the Tenant gave verbal Notice that he would be ending his tenancy effective December 31, 2014. On December 5, 2014 the Tenant refused to sign the "Late Vacate Notice" document provided by the Landlord.

The Tenant served the Landlord with written notice to end tenancy dated December 31, 2014, which included the Tenant's forwarding address. The Landlord had knowledge that the Tenant had fully vacated the rental unit by December 31, 2014 and that he had left one set of keys inside the rental unit on the counter.

The Tenant's rent was paid either by postdated cheques held by the Landlord or by preauthorized withdrawals. The Landlord actioned the Tenant's payment for January 1, 2015 rent which did not clear bank processing. As a result the Landlord seeks to recover a \$25.00 NSF fee and a \$25.00 late payment charge.

The Landlord filed to recover the January 1, 2015 unpaid rent of \$715.00 plus parking fees for December 2014 and January 2015 of \$30.00 (2 x \$15.00). The rental unit was not re-rented until February 1, 2015. Upon review of the tenant ledger submitted into evidence and a brief discussion of when the Tenant vacated the rental property the Landlord withdrew their claim for parking charges and wished to proceed with the claim for loss of January 2015 rent.

The Landlords submitted that they had arranged to conduct a move out inspection with the Tenant on January 9, 2015. The Tenant did not appear for that scheduled inspection so the Landlord posted a Final Notice of Inspection and conducted the inspection on January 13, 2015 in absence of the Tenant.

The Landlord testified that when they entered the rental unit they found only one set of keys were returned and the unit had been left unclean with some minor damage. The Landlord sought compensation of \$401.50 for damages as per the following:

- 1) \$96.00 for suite cleaning which included removal of debris, cleaning of appliances, bathroom, and the entire unit
- 2) \$110.25 carpet cleaning as per the invoice submitted into evidence
- 3) \$36.00 drapery cleaning which was conducted by staff
- 4) \$50.00 for repairing a hole in the wall

- 5) \$109.25 for Locksmith charges to rekey the lockset as the Tenant failed to return one set of keys

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 45 (1) of the Act stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 44(1)(d) of the *Act* stipulates that tenancy ends on the date the tenant vacates or abandons the rental unit.

Section 35(1) of the Act provides that the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit.

The undeniable evidence was that on December 3, 2014 and on December 31, 2014 the Tenant provided late Notice to end his tenancy effective December 31, 2014. The Tenant fully vacated the rental unit by December 31, 2014 and agreed to attend the move out inspection on January 9, 2015. The Tenant did not appear at the scheduled move out inspection. Therefore, I conclude the Tenant ended his tenancy in breach of section 45(1) of the Act effective **December 31, 2014**, pursuant to section 44(1)(d). The Tenant was also in breach of section 35(1) of the Act by failing to attend the move out inspection.

It was the totality of the aforementioned breaches which caused the Landlord to suffer a loss of rent for January 2015, as the unit was not re-rented until February 1, 2015.

Based on the foregoing, I find the Landlord provided sufficient evidence to establish their claim for loss of rent for January 2015. Accordingly, I award the Landlord loss of January 2015 rent in the amount of **\$715.00**.

Section 5(4) of the Regulation Schedule stipulates that the landlord must return to the tenant on or before the last day of the tenancy any post-dated cheques for rent that remain in the possession of the landlord.

Section 1 of the Act defines, in part, **rent** to mean money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit.

Postdated rent cheques or a pre-authorized withdrawal payment agreement were held in trust by the Landlord and were issued for the sole purpose of rent payments during the tenancy. In this case the tenancy had clearly ended on December 31, 2014. Therefore, I find the Landlord was not entitled to cash the postdated cheque or action the pre-authorized payment for January 1, 2015 as this tenancy was no longer in effect.

I conclude the Landlord is not entitled to compensation for the \$25.00 cost incurred when the January 2015 deposit did not clear the bank or the late payment charge of \$25.00 as rent was not payable after the tenancy had ended. Accordingly, the claims for \$25.00 NSF and a \$25.00 late payment fee are dismissed, without leave to reapply.

The claim for parking fees for December 2014 and January 2015 were withdrawn by the Landlord once they realized they were not entitled to claim those items. Accordingly, the claim for parking fees 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.

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear; and must return all keys to the Landlord.

Based on the aforementioned and undisputed evidence I find the Tenant breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean, with some damage, and without returning all of the keys at the end of the tenancy. Therefore, I conclude the

Landlord has met the burden of proof and I award them costs for wall repairs, cleaning, carpet cleaning, drapery cleaning, and locksmith charges in the amount of **\$401.50**.

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 –The Landlord has been awarded a monetary claim and that 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:

Loss of January 2015 Rent	\$ 715.00
Cleaning, repairs, locksmith	401.50
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,166.50
LESS: Security Deposit \$357.50 + Interest 0.00	<u>-357.50</u>
Offset amount due to the Landlord	<u>\$ 809.00</u>

Conclusion

The Landlord was primarily successful with their application and was awarded monetary compensation of \$1,166.50. The monetary award was offset against the Tenant's security deposit leaving a balance owed to the Landlord from the Tenant of \$809.00.

The Landlord has been issued a Monetary Order in the amount of **\$809.00**. 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 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: August 05, 2015

Residential Tenancy Branch

