



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WHISTLER HOUSING AUTHORITY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing was convened as a result of the Landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee.

The Landlord's Property Manager, D.W., attended the teleconference hearing. For the purposes of this Decision I will refer to him as the Landlord. During the hearing the Landlord was given the opportunity to provide his evidence orally and in documentary form. A summary of his testimony and the evidence submitted by the Landlord is provided below and includes only that which is relevant to the hearing.

As the Tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered. The Landlord testified that the Notice of Hearing was served on the Tenant by registered mail on April 22, 2015. A copy of the registered mail receipt and tracking number were also introduced in evidence. Section 90 of the Act provides that documents served in this manner are deemed served five days later. I accept the Landlord's undisputed testimony and find that the Tenant was sufficiently served as of April 27, 2015 under the *Act* as a result.

Issues to be Decided

1. Is the Landlord entitled to a monetary Order under the *Act*, and if so, in what amount?
2. Should the Landlord be entitled to retain the security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

A month to month tenancy agreement between the parties began on or about May 1, 2012 and ended on April 30, 2015 when the Tenant vacated the rental unit pursuant to an Order of Possession in favour of the Landlord. Monthly rent in the amount \$785.00 was due on the first day of each month during the tenancy. The Tenant paid a \$392.50 security deposit at the start of the tenancy which the Landlord continues to hold.

On or about December 5, 2014 a fire occurred in the rental unit. The fire appears to have been caused by cleaning rags which were left on the stove by the Tenant. The fire moved from the stove to the surrounding wooden floor causing damage to both the stove and the floor. The Tenant was not at the rental unit when the fire occurred. Fortunately, the Landlord was present and heard the smoke detectors which allowed for a rapid response by the Landlord and which minimized the loss as the fire did not spread nor were the sprinklers engaged.

The Landlord submitted the following evidence which the following:

- A copy of the residential tenancy agreement dated April 25, 2012;
- A letter from the Landlord to the Tenant dated December 8, 2014 regarding the fire;
- Seven photos of the rental unit including six which were taken immediately after the fire and one which depicts the condition of the rental unit;
- A Monetary Orders Worksheet;
- An invoice for the insurance deductible in the amount of \$3,000.00; and
- Detailed invoices for \$4,425.41 (Emergency Invoice dated January 27, 2015) and \$8,741.88 (Repair invoice dated January 27, 2015) representing the actual cost of repairs which were required due to the fire in the rental unit.

The Landlord confirmed they sought a Monetary Order in the amount of \$3,050.00 representing the amount of the insurance deductible and the filing fee. The Landlord acknowledged that their insurance premiums increased as a result of claiming the loss against their insurance policy. The Landlord stated that despite this increased cost, they agreed to limit their recovery to the amount of the insurance deductible and filing fee.

The Landlord indicated they hoped to apply the security deposit to any amount awarded. As the Application for Dispute Resolution failed to indicate a claim pursuant to section 38, I declined to make such an Order. As I informed the Landlord, to proceed with an application pursuant to section 38, without giving the Tenant notice of such a claim would offend the principles of natural justice; and in particular, the Tenant's right to know the case against them. As I informed the Landlord, they are at liberty to seek further monetary Orders.

Analysis

Based on the documentary evidence, undisputed testimony of the Landlord, and on the balance of probabilities, I find the following.

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act* (Act), the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; 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.

Section 37(2) of the Act requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy.

I find the Landlord also suffered a loss of \$3,000.00 representing the insurance deductible paid a result of the fire in the Tenant's rental unit. I find, based on the undisputed evidence of the Landlord, that the fire was caused by the Tenant's neglect of the rental premises and was a direct result of the Tenant's actions, and inattention. The Landlord correctly noted that it was very fortunate that the smoke detector was heard by the Landlord as the damage could have been significantly worse had the fire spread or the sprinkler system engaged. In this way, the Landlord mitigated their loss.

Therefore, I find the Landlord has met the burden of proof and I grant the Landlord the amount claimed, **\$3,050.00**, representing the amount of the insurance deductible paid and the filing fee. I grant the Landlord a monetary Order pursuant to section 67 of the Act in the amount of **\$3,050.00**. This Order must be served on the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that court.

Conclusion

I find that the Landlord has established a total monetary claim of **\$3,050.00** as indicated above and I grant the Landlord a monetary Order under section 67 for this amount. This Order must be served on the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 25, 2015

Residential Tenancy Branch

