



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PRINCE GEORGE & DISTRICT ELIZABETH FRY HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNRMNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on May 5, 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 the Landlord. No one was in attendance on behalf of the Tenant. The Landlord provided a sworn affidavit from a process server who personally served the Tenant with copies of the Landlord's application, hearing documents, and evidence on May 6, 2015.

Based on the undisputed evidence from the Landlord I find that the Tenant was sufficiently served notice of this hearing in accordance with Section 89(1) of the *Act* and I continued 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 month to month tenancy agreement that began on January 14, 2008. The Tenant occupied the rental unit sometime in December 2007. Rent was initially \$878.00 and was payable on or before the first of each month. Over the years the rent was increased and as of October 1, 2013 rent was payable in the amount of \$1,124.00. On December 31, 2007 the Tenant paid \$439.00 as the security deposit.

The move in condition inspection report was completed in the presence of both parties on January 14, 2008. The Tenant was given two opportunities to attend a move out inspection and a final notice of inspection was issued for September 30, 2015. The

Tenant over held the rental unit so the final inspection was not completed until October 7, 2014, in absence of the Tenant. .

On September 4, 2014 the Landlord received a notice to end tenancy from the Tenant via email. The email indicated that the Tenant's notice was to be effective September 30, 2014. No rent was paid for September 2014 and no money was received from the Tenant for use and occupancy of the unit in October 2014.

The Landlord argued that the Tenant provided insufficient notice to end her tenancy and then over held the unit which prevented the new tenants from moving into the unit. The Landlord submitted evidence that the Tenant left the rental unit and property dirty and littered with debris. As a result the Landlord is seeking \$1,665.06 monetary compensation comprised of the following:

- 1) \$1,124.00 for September 2014 unpaid rent;
- 2) \$217.56 for use and occupancy for October 1 – 6, 2014;
- 3) \$240.00 for costs to clean the rental unit as per the invoice submitted into evidence;
- 4) \$53.50 for the cost to remove one load of debris which is one additional dump for their dumpster; although two extra dumps were required;
- 5) \$30.00 for cleaning supplies; however, no invoice was submitted to prove the purchase of those supplies.

In support of their application the Landlord submitted documentary evidence which included, among other things, copies of: the tenancy agreement; the Tenant's notice to end tenancy; the Landlord's response to the notice; photographs of debris left by the Tenant; move in and move out condition report forms; communications between the parties; and photographs of the unit taken on October 7, 2014.

Analysis

The *Residential Tenancy Act* (the *Act*), stipulates provisions relating to these matters as follows:

Section 26 of the *Act* stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

Section 44(1)(a) of the *Act* stipulates that tenancy ends on the effective date of the tenant's notice to end tenancy.

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.

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 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

- 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.

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.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 72 (2)(b) provides that if the director orders a tenant to a dispute resolution proceeding to pay any amount to the landlord, including an amount under subsection (1), the amount may be deducted from any security deposit or pet damage deposit due to the tenant.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The Tenant failed to pay her September 1, 2014 rent in breach of section 26 of the *Act*, causing the Landlord to suffer a loss. Accordingly, I grant the Landlord's application for unpaid rent in the amount of **\$1,124.00**.

This tenancy ended September 30, 2014, pursuant to section 44(1)(a) of the *Act*. I accept the evidence that the Tenant over held the rental unit until October 6, 2014 which caused the Landlord to suffer a loss of rental revenue. Accordingly, I grant the Landlord's request for use and occupancy for six days in October 2014 in the amount of **\$217.56**.

I accept the Landlord's undisputed evidence that the Tenant left the rental unit and property unclean and scattered with debris in breach of section 37 of the *Act* causing the Landlord to suffer a loss of \$323.50 (\$240.00+ \$53.50 + \$30.00). Accordingly, I grant the claim for cleaning and debris removal in the amount of **\$323.50**.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

Monetary Order – This monetary award meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit plus interest as follows:

Unpaid September 2014 Rent	\$1,124.00
Use and Occupancy for October 2014	217.56
Cleaning and Debris Removal	323.50
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,715.06
LESS: Security Deposit \$439.00 + Interest \$6.61	<u>-445.61</u>
Offset amount due to the Landlord	<u>\$1,269.45</u>

Conclusion

The Landlord has succeeded with their application and was awarded monetary compensation of \$1,715.06 which was offset against the Tenant's security deposit leaving a balance owed to the Landlord of \$1,269.45.

The Landlord has been issued a Monetary Order in the amount of **\$1,269.45**. 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: October 14, 2015

Residential Tenancy Branch

