



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, 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 a monetary Order for unpaid rent or utilities, for authorization to keep all or part of the security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The Landlord attended the teleconference hearing. During the hearing the Landlord was given the opportunity to provide her evidence orally. A summary of her testimony 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 personally served on the Tenant on April 18, 2015. The Landlord testified that the Tenant was served at her place of employment and that this service was witnessed by the Landlord's spouse, R.I. I accept the Landlord's undisputed testimony and find that the Tenant was sufficiently served 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 fixed term tenancy agreement between the parties began on or about November 1, 2014 and ended on April 1, 2015 when the Tenant vacated the rental unit. Monthly rent in the amount \$2,090.00 was due on the first day of each month during the tenancy. The Tenant paid a \$1,045.00 security deposit at the start of the tenancy which the Landlord continues to hold.

The parties attended a previous hearing wherein the Landlord was granted an Order of Possession and Monetary Order for unpaid rent in the amount of \$2,090.00. Introduced in evidence by the Landlord was a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 5, 2015 as well as the proof of service of the Notice. The Landlord also introduced in evidence a copy of the Order of Possession and Monetary Order for \$2,090.00 both dated March 19, 2015 and the Writ of Possession issued March 30, 2015 by the B.C. Supreme Court. The Landlord testified that despite being served with the Order of Possession, the Tenant failed to move from the rental unit until April 1, 2015 such that the rental unit was not rented until May 2015.

The Landlord further testified that the Tenant also had a monetary Order in her favour in the amount of \$1,600.00 such that the net result was that the Tenant owed the Landlord \$590.00. The Landlord suggested that the reason the Tenant had yet to provide a forwarding address was because the Tenant knew she owed money to the Landlord and was avoiding enforcement of that Monetary Order.

The Landlord testified that the rental unit experienced a flood in November of 2014, after which the laminate flooring and carpet were replaced such that when the Tenant lived in the rental unit the flooring was all new.

According to the Landlord, the Tenant's pets caused such significant damage that the newly installed laminate flooring and carpet during the tenancy that the flooring had to be replaced again at the end of the tenancy. Introduced in evidence was a letter dated April 10, 2015 from a flooring company which confirmed that the laminate flooring was starting to peak due to the expansion of the boards caused by moisture. A letter dated April 10, 2015 from the same flooring company provided an estimate of \$3,050.00 to replace the laminate flooring.

Also introduced in evidence was a document dated April 13, 2015 written by J.D. who wrote that black lights were used to test the carpet in the master bedroom and living room and hallway, and these lights confirmed those areas were stained by cat urine. J.D. further wrote that there was a strong odor of urine in the master bedroom. The

above mentioned flooring company also provided a quote dated April 16, 2015 for \$896.00 to replace the carpet in the master bedroom.

The Landlord also testified that when the Tenant painted the rental unit they failed to replace the wall covers in some cases, and simply painted over other wall covers in other cases. Introduced in evidence was a receipt for a replacement thermostat in the amount of \$90.45.

Also introduced in evidence was an invoice for \$380.00 from J.D. for his work removing the laminate flooring, repairing the walls, installing a curtain rod and removing and replacing wall panels.

The Landlord provided a copy of the move out Condition Inspection Report which confirmed the condition of the rental unit upon move out. The Landlord confirmed the Tenant refused to participate in the inspection.

The Landlord also sought liquidated damages in the amount of \$400.00 for her travel time and expenses associated with re-renting the rental unit. She testified that she lives approximately 50 minutes driving time away from the rental unit. She did not provide any associated receipts.

The Landlord confirmed at the hearing that she wished to withdraw her claim for reimbursement in the amount of \$160.00 and that she sought a monetary Order in the amount of **\$6,933.25** comprised of the following:

Item Description	Amount
Loss of rent for April 2015	\$2,090.00
Replacement of laminate flooring due to water damage caused by Tenant	\$3,202.50
Replacement of carpet due to Tenant's pet's urine	\$720.30
Thermostat replacement	\$90.45
Repair work performed by J.D.	\$380.00
Liquidated damages to re-rent rental unit	\$400.00
Filing fee	\$50.00
TOTAL MONETARY CLAIM	\$6,933.25

Analysis

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

The Tenant, in failing to vacate the rental unit until April 1, 2015 cause the Landlord to suffer a loss of rent for April 2015 in the amount of \$2,090.00 as the Tenant did not vacate the rental in time for the Landlord to rent the rental unit for April 1, 2015.

I accept the undisputed evidence of the Landlord, as well as the documentary evidence filed in support of the amounts claimed for cleaning and repair that the Tenant left the rental unit in such a condition that the Landlord incurred these costs.

I decline the Landlord's request for \$400.00 in liquated damages as the tenancy agreement makes no provision for such liquidated damages.

Therefore, I find the Landlord has met the burden of proof and I grant the Landlord the sum of **\$6,433.25** for the following:

Item Description	Amount
Loss of rent for April 2015	\$2,090.00
Replacement of laminate flooring due to water damage caused by Tenant	\$3,202.50
Replacement of carpet due to Tenant's pet's urine	\$720.30
Thermostat replacement	\$90.45
Repair work performed by J.D.	\$380.00
Filing fee	\$50.00
TOTAL AMOUNT AWARDED	\$6,433.25

Further, I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit, which the Landlord continues to hold, in the amount of **\$1,045.00**.

I authorize the Landlord to retain the Tenant's full security deposit in partial satisfaction of the Landlord's monetary claim, and I grant the Landlord a monetary Order pursuant to section 67 of the *Act* for the balance owing by the Tenant to the Landlord in the amount of **\$5,888.25**. 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 authorize the Landlord to retain the security deposit and grant the Landlord a monetary Order under section 67 for the balance due of **\$5,888.25**. 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: October 07, 2015

Residential Tenancy Branch

