



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LI-CAR MANAGEMENT GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on July 21, 2015. The Landlord filed seeking a Monetary Order for: damage to the unit, site or property; unpaid rent or utilities; 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 cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

On December 15, 2015 the Landlord submitted 10 pages of evidence and on July 21, 2015, the Landlord submitted 11 pages of evidence to the Residential Tenancy Branch (RTB). The Landlord affirmed that she served the Tenant with copies of the same documents that she had served the RTB. The Tenant acknowledged receipt of these documents and no issues regarding service or receipt were raised. As such, I accepted the Landlord's relevant submissions as evidence for these proceedings.

No evidence was received by the RTB from the Respondent Tenant.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to monetary compensation?

Background and Evidence

The parties entered into a written month to month tenancy that began on August 12, 2014. The tenancy agreement listed two co-tenants J.T. and S.K. Rent of \$900.00 plus \$60.00 utilities was payable on or before the first of each month and on August 8, 2014 the Tenant paid \$450.00 as the security deposit.

On June 1, 2015 the co-tenant S.K. gave the Landlord written notice to end the tenancy effective June 30, 2015. The other co-tenant J.T. signed the document stating that he would continue to reside in the rental unit. S.K. vacated the property as of June 30, 2015.

On July 3, 2015 when July rent remained unpaid the Landlord served J.T. a 10 Day Notice for unpaid rent when it was posted to the Tenant's door. The 10 Day Notice listed an effective date of July 16, 2015 for \$933.00 in unpaid rent that was due July 01, 2015.

The Landlord submitted evidence that the Tenant vacated the rental unit sometime before July 14, 2015. The move out inspection was scheduled for July 14, 2015 and was attended by the S.K. who was acting as agent for the remaining Tenant J.T. The Tenant's agent signed the move out condition report form and returned the rental unit keys to the Landlord.

The Landlord submitted that the rental unit was left requiring cleaning and with \$873.00 outstanding for July 2015 rent. The Landlord claimed two hours of cleaning costs at \$35.00 per hour as supported by the time sheets submitted in her documentary evidence.

The Tenant testified that he was not disputing the Landlord's claim of \$70.00 for cleaning or their claim for \$873.00 for unpaid July rent. He stated that his agent, S.K. had told him that the Landlord told her that he would be getting \$180.00 returned from his security deposit.

The Landlord testified that she was not aware of anything being said about returning \$180.00 to the Tenant.

Analysis

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

In this case I find the written tenancy agreement that listed the two co-tenants ended effective June 30, 2015 based on the Tenant S.K.'s notice to end tenancy. I further find that the remaining Tenant J.T. entered into a verbal tenancy agreement to continue occupying the rental unit under the same terms as the written agreement.

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

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

The undisputed evidence was the Tenant failed to pay his July 1, 2015 rent, in breach of section 26 of the *Act*. Accordingly, I find the Landlord submitted sufficient evidence to prove their claim and I award them **\$873.00** for unpaid July 2015 rent, pursuant to section 67 of the *Act*.

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 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.

Notwithstanding the Tenant's submission that he was of the impression that he would be getting some money back from his deposit, he did not dispute the Landlord's claims. The Landlord submitted undisputed evidence that the rental unit required cleaning at the end of this tenancy. Therefore, I grant the Landlord's claim for cleaning costs in the amount of **\$70.00**, pursuant to section 67 of the *Act*.

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 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 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:

Unpaid July 2015 Rent	\$ 873.00
Cleaning costs	70.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$ 993.00
LESS: Security Deposit \$450.00 + Interest 0.00	<u>-450.00</u>
Offset amount due to the Landlord	<u>\$ 543.00</u>

Conclusion

The Landlord was successful with their application and was granted a monetary award of \$993.00. That award was offset against the Tenant's \$450.00 security deposit leaving a balance owed to the Landlord of \$543.00.

The Landlord has been issued a Monetary Order in the amount of **\$543.00**. 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 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: January 07, 2016

Residential Tenancy Branch

