



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MND, MNSD & MNDC

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$9886.16 for unpaid rent and damages
- b. An order to keep the security deposit.
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of a representative of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the Tenant by mailing, by registered mail to where the Tenant resides on December 2, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on June 4, 2015. The tenancy agreement provided that the tenant(s) would pay rent of \$1350 per month payable in advance on the first day of each month.

The landlord testified the tenant failed to pay the rent for October and the landlord obtained an Order for Possession and a monetary order in another proceeding for the sum of \$1350 for non payment of rent for October. The tenant vacated the rental unit on November 15, 2015. The landlord re-rented the rental unit with the new Tenant taking possession on December 4, 2015.

Landlord's Application - Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. The Monetary Order worksheet which accompanies the Application for Dispute Resolution filed by the landlord claims \$5040 for the cost to repair the unit. She testified the work has not been done. I determined the landlord has failed to sufficiently identify her claim. One of the fundamental principles of our legal system is that a applicant must give the respondent sufficient notice of the claims being made against him/her so that he/she can mount a defense. This is an integral part of the rules of natural justice. Rule 2.5 of the Rules of Procedure provide as follows:

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch directly or through a Service BC office, the applicant must submit:

- **a detailed calculation of any monetary claim being made;**
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and

- copies of all other documentary and digital evidence to be relied on at the hearing.

The global amount of \$5040 lacks the specificity needed to meet the requirements of the Rules of Procedure and the rules of natural justice. I determined the Applicant has failed to provide a detailed calculation of this party of her monetary claim and failed to follow the principles of natural justice. As a result I dismissed the claim. As I have not determined this issue on the merits I give the landlord leave to re-apply.

The filed containing Application for Dispute Resolution filed by the landlord did not include evidence. The landlord testified she left it with the Branch. My dismissal of the above claim is a result of the failure to give proper notice to the Respondent and not a result of the lack of evidence.

- b. I determined the landlord is entitled to \$997.91 for the cost of replacing the damage fridge. She testified the fridge was new when the tenant took possession and that the developer has told her that it will cost this sum to replace the fridge as it is not possible to replace it.
- c. The landlord claimed the sum of \$3848.25 for R-W receipt. The particulars of that claim as set out in the monetary order worksheet state that it is for a broken lease and loss of rent. The landlord testified there is a liquidated damage clause in the tenancy agreement that the tenant must pay \$500 for the administrative cost of re-renting the rental unit for the cost of the real estate firm. Based on the landlord's evidence I awarded the landlord \$500 for this claim.

The representative of the landlord testified it has lost the rent for November because the tenant failed to vacate until the middle of the month. Despite attempting to mitigate her loss the new tenant did not move in until December 4, 2015. The landlord also referred to another hearing which involved a Direct Request hearing claim. She stated she obtained a monetary order in that hearing for the October rent. After the hearing was over I obtained a copy of the decision in that hearing and discovered that the landlord obtained a monetary order of \$1350 for unpaid rent for November. This is extremely troublesome as it appears the landlord has mislead the arbitrator. In a situation such as this it is not uncommon for a decision maker to dismiss the claim in total as the testimony is unreliable. I prefer to give the landlord the benefit of the doubt and consider this to be a mistake. I dismissed the claim for rent for November as that has already been awarded. I determined the landlord is entitled to 4 days of rent for

December or the sum of \$174. I dismissed the claim of \$50 a month for a late rent payment as such a sum is not permitted under the Residential Tenancy Act Regulations. The remainder of the claims under this heading are dismissed without leave to re-apply.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$1671.91 plus the \$100 filing fee for a total of \$1771.91.

Security Deposit

I determined the security deposit plus interest totals the sum of \$675. I determined the landlord is entitled to retain this sum. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$1096.91.

Conclusion

In summary I ordered that the landlord shall retain the security deposit of \$675.

I further ordered that the Tenant pay to the Landlord the sum of \$1096.91.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: March 21, 2016

Residential Tenancy Branch

