



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ALOUETTE RIVER MOBILE HOME PARK LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the unit or property; unpaid rent and utilities; damage or loss under the Act, regulations or tenancy agreement; and authorization to retain the security deposit and pet damage deposit. The tenant did not appear at the hearing. The landlord provided a registered mail receipt, including tracking number, to show the hearing documents and evidence were sent to the tenant on October 20, 2015. The address used for service was the tenant's forwarding address that he had provided to the landlord via text message. The landlord also included a copy of an image of the text message. The landlord testified that the registered mail was not returned. I was satisfied the landlord served the tenant with notification of this proceeding in a manner that complies with the requirements of section 89(1) of the Act and I continued to hear from the landlord without the tenant present.

At the outset of the hearing the landlord requested the monetary claim be reduced to reflect actual costs that were less than those originally estimated. As this request was beneficial to the tenant I permitted the application to be amended.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for the amounts claimed, as amended?
2. Is the landlord authorized to retain the tenant's security deposit and pet damage deposit?

Background and Evidence

The tenant began occupying the rental unit under a fixed term tenancy agreement that commenced March 1, 2010. A second fixed term tenancy agreement was entered into before the last tenancy agreement was entered into. The last tenancy agreement entered into between the parties for the subject property was executed on February 12, 2011 for a month-to-month tenancy set to commence March 1, 2011 (herein referred to as the tenancy agreement).

The tenancy agreement required the tenant to pay rent of \$1,200.00 on the first day of every month. A \$600.00 security deposit and \$600.00 pet damage deposit was transferred from the previous tenancy agreement to the last tenancy agreement.

On September 10, 2015 the tenant gave the landlord verbal notice that he intended to end the tenancy at the end of September 2015. The landlord informed the tenant that written notice was required.

On September 11, 2015 the landlord received notification from the landlord's financial institution that the tenant's rent cheque for September 2015 had been dishonoured due to the tenant placing a stop payment on the cheque.

The tenant gave the landlord written notice to end tenancy on September 17, 2015 but the stated effective date was September 30, 2015. The landlord informed the tenant that the notice was insufficient and that the earliest the tenant could end the tenancy was effective at the end of October 2015. Nevertheless, immediately after receiving the tenant's notice the landlord commenced efforts to advertise the rental unit and showed the unit to prospective tenants but the landlord was unsuccessful in securing new tenants for October 2015.

The landlord proposed a move-out inspection to the tenant for October 5, 2015 and sent the proposal to the tenant via registered mail. The landlord sent the tenant a text message on October 5, 2015 to the tenant to remind the tenant about the move-out inspection. The tenant responded via text message indicating that the keys were left in the rental unit. By way of a text message the landlord proposed the move-out inspection be rescheduled to October 11, 2015 at 9:30 a.m. and informed the tenant that a Notice of Final Opportunity to Schedule a Condition Inspection was attached to the door of the rental unit. On October 11, 2015 the tenant text messaged the landlord to request the move-out inspection be rescheduled to 10:30 or 11:00. The landlord agreed to meet the tenant at 10:30 a.m. The tenant eventually showed up for the move-out inspection at approximately 11:20 a.m. Upon arriving at the rental unit the tenant removed some possessions from the property but did not finish the move-out inspection with the landlord. The landlord waited at the property but the tenant did not return. The landlord proceeded to complete the move-out inspection, including the condition inspection report, and take photographs after the tenant walked away from the property.

Below, I have summarized the landlord's claims against the tenant.

Description	Reason	Amount
Unpaid Rent – September 2015	Tenant failed to pay rent	\$1,200.00
Loss of Rent – October 2015	Loss of rent due to the tenant's failure to give adequate notice to end tenancy and the condition in which the property was left	1,200.00
Service fee	Amount charged to landlord for stop payment on	5.00

	September 2015 rent cheque	
Administration fee	As provided in tenancy agreement for returned cheques	25.00
Cleaning and disposal of garbage and abandoned property	Rental unit left unclean and with garbage and abandoned property	250.00
Replace shower head	Shower head missing at end of tenancy	8.94
Replace smoke detectors	Smoke detectors missing at end of tenancy	39.41
Replace door passage set	Interior door kicked in damaging door handle	19.02
Canada Post	Registered mail costs	10.50
BC Hydro	Tenant disconnected hydro service as of September 20, 2015. Landlord charged for hydro for September 20 – 30, 2015	6.30
Fortis Gas	Tenant disconnected natural gas to the property as of September 20, 2015. Landlord charged for gas for September 20 – 30, 2015	7.70
Total		\$2,771.87

Supporting evidence provided by the landlord included photographs of the rental unit taken before the tenancy commenced and as the tenant left it at the end of the tenancy. The landlord also provided copies of: the tenancy agreement, including the addendum; the September 2015 rent cheque that was dishonoured including the notice form the landlord's financial institution; the tenant's notice to end tenancy; the landlord's notices with respect to scheduling the move-out inspection; the condition inspection reports prepared at the beginning and end of the tenancy; receipts for the amounts claimed including registered mail receipts.

Analysis

Upon consideration of the unopposed evidence before me, I provide the following findings and reasons.

Section 26 of the Act provides that a tenant is required to pay rent in accordance with their tenancy agreement. In this case, the tenant was required to pay rent of \$1,200.00 every month of the tenancy. The tenancy was still in effect in September 2015 and the tenant failed to pay rent for this month. Therefore, I grant the landlord's request to recover unpaid rent of \$1,200.00 for the month of September 2015.

Section 45 of the Act provides for the ways a tenant must end a month to month tenancy. A tenant is required to give at least one full month of written notice to the landlord and the effective

date must be no less than 30 days after the written notice is given and be the day before rent is due. Accordingly, in giving the landlord written notice on September 17, 2015 I find the earliest date the tenant could have ended the tenancy and ended his obligation to pay rent was October 31, 2015. Accordingly, I find the tenant gave insufficient notice to end the tenancy as of September 30, 2015 and I find the tenant remained obligated to pay rent for October 2015. I further accept that the landlord took reasonable steps to mitigate loss of rent by advertising the unit and showing the unit to prospective tenants. Therefore, I find the landlord has established an entitlement to recover loss of rent from the tenant for the month of October 2015 in the amount of \$1,200.00.

Section 7(1) of the Residential Tenancy Regulations provides that a landlord may charge a tenant certain non-refundable fees including:

- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
- (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

The landlord provided documentary evidence to show that the landlord's financial institution charged the landlord a service fee of \$5.00 because the tenant's rent cheque for September 2015 was returned. Therefore, I find the landlord entitled to recover this fee from the tenant.

As provided under section 7(2) of the Regulations, the administrative fee payable under paragraph (d) above applies if the tenancy agreement provides for such a fee. The tenancy agreement provided as evidence included an addendum that was signed and initialled by the tenant. Under term 11 of the addendum is a provision for an administrative fee of \$25.00 if a cheque is returned for any reason. Therefore, I find the landlord is further entitled to recover an administration fee of \$25.00 from the tenant due to the tenant placing a stop payment on his September 2015 rent cheque.

Section 37 of the Act requires that a tenant leave a rental unit reasonably clean and undamaged at the end of the tenancy. The tenant is also required to leave the rental unit vacant which means removal of garbage and abandoned possessions. Upon review of the landlord's evidence, including the condition inspection reports, photographs, and receipts, I accept the landlord's unopposed position that the tenant failed to leave the rental unit reasonably clean and devoid of garbage and abandoned possessions. I also accept that the shower head and smoke detectors went missing during the tenancy and the door passage set was damaged during the tenancy. While most building elements have limited useful lives, including shower heads, smoke detectors and door passage sets and it is often appropriate to reduce replacement cost by depreciation of the original items, the landlord did not charge any amount for labour to pick up and install these replacement items. Accordingly, I find the landlord's request to recover the

cost of the materials only for the replacement shower head, smoke detectors and door passage set to be reasonable. In light of the above, I grant the landlord's request to recover the amounts claimed for cleaning, disposal of garbage and abandoned property; and replacement of the shower head, smoke detectors, and door passage set.

Upon review of the tenancy agreement, I find that rent did not include electricity or heat. Accordingly, I find the costs for these services incurred during the tenancy are that of the tenant. I heard that during the tenancy the tenant had hydro accounts and gas accounts set up for the property but discontinued his accounts on September 20, 2015 causing the landlord to incur costs for the remainder of the tenancy. Therefore, I grant the landlord's request to recover hydro and gas costs incurred at the property for the period of September 20, 2015 through September 30, 2015 from the tenant in the amounts of \$6.30 and \$7.70 respectively.

With respect to the landlord's claim to recover the registered mail costs, I deny this claim as costs to prepare and participate in a dispute resolution process are not recoverable under the Act except for the filing fee. Given the landlord was largely successful in this application I award the landlord recovery of the \$50.00 filing fee paid by the landlord.

As provided under section 72 of the Act, I authorize the landlord to retain the tenant's security deposit and pet damage deposit in partial satisfaction of the amounts claimed.

In light of all of the above, the landlord is provided a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid Rent – September 2015	\$1,200.00
Loss of Rent – October 2015	1,200.00
Service fee for returned cheque	5.00
Administration fee for returned cheque	25.00
Cleaning and disposal costs	250.00
Replace shower head	8.94
Replace smoke detectors	39.41
Replace door passage set	19.02
Canada Post – registered mail	nil
BC Hydro	6.30
Fortis Gas	<u>7.70</u>
Sub-total	\$2,761.37
Plus: filing fee	50.00
Less: security deposit	(600.00)
Less: pet damage deposit	<u>(600.00)</u>
Monetary Order	\$1,611.37

The Monetary Order may be enforced by filing it in Provincial Court (Small Claims) and having it enforced as an order of the court.

Conclusion

The landlord has been authorized to retain the tenant's security deposit and pet damage deposit and has been provided a Monetary Order for the balance of \$1,611.37 to serve and enforce upon the tenant.

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: April 29, 2016

Residential Tenancy Branch