



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, MNR, FF, SS

Introduction and Preliminary Matter

This hearing dealt with an Application for Dispute Resolution by the Landlord for a Monetary Order for unpaid rent, for loss of rent, for compensation under the Act and the tenancy agreement, for damage and cleaning of the rental unit, for an Order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Landlord appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified that his friend, C.D., personally served the Tenant with the Notice of Hearing and their Application on April 4, 2016 at 7:00 p.m. Introduced in evidence was a letter from C.D. dated April 4, 2016 confirming she personally served the Tenant on this date. The Landlord confirmed that he attempted to send the materials in January of 2016 to the Tenant by registered mail, but the Tenant would not retrieve the mail. Based on the undisputed testimony of the Landlord I find the Tenant was duly served with the Landlord's Application for Dispute Resolution and Notice of Hearing and I proceeded with the hearing in her absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlord was already granted authorization to retain the Tenant's security deposit at a previous hearing, I am unable, pursuant to the legal principle, *Res Judicata*, to make further Orders with respect to those funds. The Landlord's claim pursuant to section 38 is therefore dismissed as having been already decided.

Issue to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

The Landlord testified as to the tenancy as well as providing a copy of the residential tenancy agreement. This tenancy began September 1, 2013; monthly rent was payable in the amount of \$1,100.00 payable on the first of the month.

The tenancy ended pursuant to an Order of Possession granted in January of 2014. Pursuant to the hearing on January 9, 2014, the Landlord was provided the following compensation:

Unpaid rent for November	\$1,100.00
Loss of revenue for December and January	\$2,200.00
Recovery of the filing fee	\$50.00
Subtotal	\$3,350.00
Less security deposit	- \$550.00
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$2,800.00

The Landlord confirmed that the Tenant vacated the property at the end of January 2014. The Landlord stated that although he had an Order of Possession from the January 9, 2014 hearing, he was forced to have the RCMP involved to have the Tenant leave and as a result was unable to rent the rental unit for February 2014.

The Landlord also claimed that due to the condition the rental unit was left, he incurred considerable costs to clean and repair the unit.

In the within action the Landlord claims as follows:

Loss of rent for February 2014	\$1,100.00
Cost to replace baseboard heater, toilet seat and toilet paper holder	\$160.83
Labour	\$30.00
Replacement of three window screens	\$74.41
Replace door lock and smoke detector	\$294.14
Labour	\$30.00
Cost of printing photos	\$25.65
Replacement of two blinds	\$163.49
Labour	\$30.00
Cleaning, drywall and paint repair, truck rental cleaning supplies, garbage bags and tax	\$1,120.78
Fees to dispose of Garbage	\$71.40
Labour to repair refrigerator	\$30.00
\$25.00 late fee for 90 days	\$2,250.00
Total claimed	\$5,430.70

The Landlord submitted substantial photographic evidence of the rental unit which confirm the condition in which the Tenant left it, the damage to the unit, as well as receipts for the amounts claimed.

The Tenant failed to attend the hearing to dispute the Landlord's claims.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities and in this case the Landlord bears the burden to prove his claims.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I accept the Landlord's undisputed testimony that due to the fact the Tenant refused to leave the rental unit he suffered a loss of rent for February 2014 in the amount of \$1,100.00. Accordingly I award him compensation for this amount.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in Part 2 of the Act as follows:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

I find, based on the Landlord's undisputed testimony that the Tenant breached section 37 of the *Residential Tenancy Act*, and in doing so caused the Landlord to suffer the losses claimed for cleaning and repair. I find the amounts claimed by the Landlord to be reasonable considering the condition of the rental unit as depicted in the photos.

Section 7 of the *Residential Tenancy Act Regulation* mandates that a Landlord may only charge a maximum of \$25.00 as a late fee. In the case before me, the Landlord seeks a total of \$25.00 per day for 90 days. As this represents late payment for three months, I award him **\$75.00** representing the \$25.00 per month allowable amount.

The Landlord also seeks compensation for the cost to reproduce photos. This is not recoverable under the *Residential Tenancy Act* and his request is denied.

In total, I find that the Landlord has established a total monetary claim of **\$3,230.05** comprised of the following:

Loss of rent for February 2014	\$1,100.00
Cost to replace baseboard heater, toilet seat and toilet paper holder	\$160.83
Labour	\$30.00
Replacement of three window screens	\$74.41
Replace door lock and smoke detector	\$294.14
Labour	\$30.00
Replacement of two blinds	\$163.49
Labour	\$30.00
Cleaning, drywall and paint repair, truck rental cleaning supplies, garbage bags and tax	\$1,120.78
Fees to dispose of Garbage	\$71.40
Labour to repair refrigerator	\$30.00
\$25.00 late fee for three months	\$75.00
Total awarded	\$3,230.05

I grant the Landlord a Monetary Order under section 67 for this amount. This Order must be served on the Tenant and may be filed in the B.C. Provincial Court (Small Claims Division) and enforced as an order of that Court.

Conclusion

The Landlord is granted a Monetary Order in the amount of **\$3,230.05**.

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: September 7, 2016

Residential Tenancy Branch