



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, SS, O, FF

Introduction

This hearing was convened by way of conference call in response to the landlords' application for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlords to keep all or part of the tenant's security deposit; for an Order to serve documents in a different way than required by the *Act*, other issues; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlords to the tenant, was done in accordance with section 89 of the *Act*; served in person by a process server on February 22, 2016.

The landlords appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords permitted to keep all or part of the security deposit?
- Do the landlords require an Order to serve the tenant in a way different then required by the *Act*?

Background and Evidence

The landlords testified that this tenancy started on June 01, 2015 for a fixed term tenancy that was not due to end until May 31, 2016. The landlords deemed that the tenant had abandoned the rental unit and his belongings in the middle of November, 2015. Rent for this unit was \$1,750.00 per month due on the 1st of each month. The tenant paid a security deposit of \$1,000.00 on May 31, 2015.

The landlords testified that the tenant attempted to break into other units in the building and was arrested by the Police on October 20, 2015. An Order was made by the court to restrict the tenant from accessing the building. As the tenant was not allowed to enter the building his tenancy effectively ended and the landlord removed his belongings into storage in the middle of November, 2016. On February 14, 2016 the tenant arrived under police escort to retrieve his belongings from the landlords.

The landlords testified that the tenant failed to pay all the rent for September, 2015. The tenant paid \$800.00 and left an unpaid balance of \$950.00. the tenant failed to pay any rent for October, 2015. A 10 Day Notice was served upon the tenant in person on October 14, 2016. This Notice had an effective date of October 24, 2016. The tenant failed to pay the rent due of \$2,700.00. The landlords request a Monetary Order to recover this amount.

The landlords testified that the common doorways between the floors of the building are locked to prevent tenants accessing other floors. The tenant broke into the 14th floor through this hallway door. This resulted in damage to the lock of the door. The tenant also attempted to break into two other units which resulted in damage to the locks of those units. The strata council charged the landlords \$997.50 to have the locksmith come out to deal with the locks on these doors on three separate occasions; October 05, October 08 and October 20, 2015. A copy of the locksmiths invoice has been provided in documentary evidence.

The landlords testified that due to the tenant's actions in causing damage to common areas and attempted break in in the building the landlords were fined \$400.00 by strata council. A copy of these fines is included in the strata charge back information provided in evidence

The landlords testified that the tenant also tried to break into the unit opposite the rental unit on two occasions. The second time the tenant was arrested. The tenant caused damage to the

door of that unit. The tenant also damaged the entry door and this door had to be secured and parts replaced. Strata council charged the landlords \$1,740.51 for this repair. Copies of the repair invoices have been provided in documentary evidence along with the charge back bills from strata to the landlords.

The landlords testified that the tenant did not return the key fob for the front door of the building. The landlords had to replace this and seek to recover the cost for a new key fob of \$75.00.

The landlords testified that at the start of the tenancy the rental unit was in a clean and well maintained condition. At the end of the tenancy the landlords found damage done to many of the walls in the unit with holes in the walls in multiply places and what appears to be knife marks on the walls. The unit was also left in an unclean condition. The landlords had to have the walls repaired and repainted and the unit cleaned and seek to recover the cost for this work of \$1,100.00. The landlords referred to the invoice for this work and their photographic evidence showing the deliberate damage.

The landlords seek an Order to be permitted to keep the security deposit of \$1,000.00 in partial satisfaction of their claim.

The landlords seek an Order to be permitted to serve the tenant with any Monetary Order in a way different to that required under the *Act*. The tenant was served with the hearing documents while he was at court by the landlords' process server. The landlord requested permission to serve the tenant to his email address if their process server cannot serve him in person.

The landlords seek to recover their filing fee of \$100.00 from the tenant.

Analysis

The tenant did not appear at the hearing to dispute the landlords' claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords' undisputed evidence before me.

With regard to the landlords' claim for unpaid rent; I refer the parties to s. 26 of the Act which states:

26. A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied from the undisputed evidence before me that the tenant had an outstanding balance of rent for September, 2015 of \$950.00 and that no rent was paid for October, 2015. Consequently, I find the landlords have established a claim to recover unpaid rent to a total amount of **\$2,700.00**.

With regard to the landlords' claim for damage caused in the common areas by the tenant; the landlords has the burden of proof to show this damage was caused by the tenant. I am satisfied from the evidence before me and on a balance of probabilities that in light of the fact that the tenant was arrested for breaking into units that the tenant did cause this damage to the common area doors and to the doors of other units. I find therefore the landlords have established their claim to recover the amounts charged to them by the strata to repair this damage to a total amount of **\$4,271.01** plus **\$400.00** in strata fines.

With regard to the replacement key fob; a tenant is required to return all the keys and fobs provided at the start of the tenancy to the landlords at the end of the tenancy, whatever the circumstances are that causes the tenancy to end. Consequently, I am satisfied that the tenant did not return the key fob and therefore the landlords have established a claim to recover the replacement costs of **\$75.00**.

With regard to the landlords' claim for damage to the rental unit; I refer the parties to s. 32(2) and 32(3) of the Act which outlines the tenant's obligations to maintain and repair the rental unit; this states:

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit 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.

I am satisfied from the photographic evidence before me that the tenant did not leave the rental unit clean and that the tenant caused damage to the rental unit which the tenant did not repair. Consequently, I find the landlords have established a claim to recover **\$1,100.00** for repairs and painting of the wall and for cleaning the unit.

I Order the landlords to retain the security deposit of \$1,000.00 pursuant to s. 38(4)(b) of the *Act*. This will be offset against the landlords' monetary claim.

With regard to the landlords' claim for an Order to serve the tenant in a different way than required by the *Act*, the landlords asked to be permitted to serve any orders upon the tenant by way of the tenant's email address. The landlords have not provided evidence to show that the tenant's email address is currently active or that by serving the tenant in this way that it is likely the tenant will have sight of the Monetary Order. Consequently, I am not prepared at this time to issue a substitute service order. The landlords must attempt to serve the tenant in a way prescribed under s. 88 of the *Act*. If they are unable to do so they may reapply for a substitute service order. This section of the landlords' application is dismissed with leave to reapply.

As the landlords' claim has merit I find the landlords are entitled to recover the filing fee of **\$100.00** from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlords pursuant to s. 67 and 72(1) of the *Act* as follows:

Unpaid rent	\$2,700.00
Damage to common areas of the building	\$4,271.01
Strata fines	\$400.00
Key fob replacement	\$75.00
Repairs and cleaning to unit	\$1,100.00
Subtotal	\$8,546.01
Filing fee	\$100.00
Less security deposit	(-\$1,000.00)
Total amount due to the landlords	\$7,646.01

Conclusion

I HEREBY FIND in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$7,646.01**. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: September 28, 2016

Residential Tenancy Branch