



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RICKFORD MANOR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to hear monetary cross applications. The landlord appeared at the hearing; however, the tenant did not appear despite leaving the teleconference call open at least 20 minutes.

The landlord acknowledged that the tenant served him with her Application for Dispute Resolution. Since the tenant failed to appear for the hearing and the landlord was prepared to respond to the tenant's application, I dismissed the tenant's application without leave to reapply.

As for the landlord's application, the landlord testified that it was sent to the tenant via registered mail on May 18, 2016 using the service address that appears on the tenant's application. The landlord did not have the registered mail receipt in front of him and stated that he had previously sent it to the Branch via a Service BC office. The file before me did not include a registered mail receipt and I authorized and ordered the landlord to provide another copy of the receipt. I proceeded to hear the landlord's claims and a registered mail receipt was received shortly after the teleconference call ended. I have been satisfied that the landlord served the tenant with notification of the landlord's claims against her I proceed to consider the landlord's claims.

I noted that the tenant identified the landlord using a first name that appears as the landlord's middle name on the landlord's application. Upon review of the documentation provided to me it would appear the landlord commonly uses his middle name as his first name. Accordingly, in the style of cause I have used both names for the landlord along with "aka" which stands for as known as.

Issue(s) to be Decided

1. Is the landlord entitled to compensation from the tenant, as claimed?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The tenancy started on February 15, 2015 and the tenant paid a security deposit of \$340.00. The tenant was required to pay rent of \$680.00 on the first day of every month. On February 29, 2016 the landlord and tenant participated in a dispute resolution preceding that dealt with a 1 Month Notice to End Tenancy for Cause (file number provided on cover page of this decision). The Arbitrator hearing that case upheld the 1 Month Notice and issued an Order of Possession to the landlord on February 29, 2016.

On March 7, 2016 the tenant filed an Application for Review Consideration and her application was dismissed in a decision issued by another Arbitrator on March 29, 2016.

On April 1, 2016 the landlord applied for and obtained a Writ of Possession from The Supreme Court of British Columbia. The landlord provided a copy of the Writ and a receipt for the \$120.00 filing fee paid to the court.

On April 8, 2016 a court bailiff served the Writ of Possession upon the tenant and took possession of the rental unit. The landlord provided a copy of the court bailiff's statement and letter dated April 14, 2016 to show the bailiff charged the landlord \$1,606.76 for their services.

The landlord testified that that the tenant refused to return the keys for the building and the rental unit despite urging of the police that were called to the rental unit. In order to protect the property from the tenant or her friends returning to the property the police suggested the landlord change the locks to the building and the rental unit. The landlord had the building and rental unit rekeyed on April 8, 2016 at a cost of \$918.75. The landlord provided a copy of the receipt for the locksmith.

The landlord testified that the bailiff returned the rental unit to the landlord in reasonably good condition; however, it had not been cleaned. The landlord proceeded to clean the rental unit himself. The landlord spent five hours cleaning the unit and seeks compensation of \$25.00 per hour, or \$125.00.

The landlord seeks to recover the above described costs from the tenant plus compensation for loss of rent for the month of March 2016 since the tenant remained in possession of the rental unit and did not pay for the continued use and occupation.

Analysis

Considering all of the unopposed evidence before me, I provide the following findings and reasons.

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. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this case, the tenant was served with an Order of Possession and did not vacate the rental unit as ordered. The tenant's request for a review hearing was unsuccessful, as seen in the decision issued on March 29, 2016, yet the tenant was still in possession of the unit when the landlord applied for a Writ of Possession and when the court bailiff attended the property on April 8, 2016. Accordingly, I find the tenant violated the Act by not vacating the rental unit when she was required to and the landlord pursued further lawful enforcement of the order at a cost to the landlord of \$1,606.76 for the court bailiff services and \$120.00 for the Supreme Court filing fee. I find the landlord entitled to recover these costs from the tenant due to her failure to abide by the order and I grant the landlord's request to recover these costs from the tenant.

Under section 37 of the Act, a tenant is required to return all keys and means of access to the rental unit and residential property at the end of the tenancy. I heard unopposed evidence that when the court bailiff was taking possession of the rental unit on April 8, 2016 the tenant refused to return the keys as requested. I find the tenant did not have the right to retain the keys after the bailiffs took possession and the tenant was in violation of section 37 of the Act. I find the landlord's actions of rekeying the building and rental unit due to the tenant's actions to be reasonable in the circumstances.

Therefore, I grant the landlord's request to recover the rekeying costs from the tenant in the amount of \$918.75.

I accept the unopposed evidence before me that the rental unit required additional cleaning after the bailiffs removed the tenant and her possessions from the rental unit. I find the landlord's claim to be within reason and I grant the landlord's request to recover \$125.00 from the tenant for cleaning.

Having been satisfied that the tenant remained in possession of the rental unit through the month of March 2016 without receiving payment from the tenant for the month of March 2016, I find the landlord's request for compensation for loss of rent for the month of March 2016 to be justified. Therefore, I grant the landlord's request to recover loss of rent of the month of March 2016 from the tenant in the amount of \$680.00.

Since the landlord was successful in this application, I further award the landlord recovery of the \$100.00 filing fee the landlord paid for this application.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord with this decision.

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

Court bailiff services	\$1,606.76
Supreme Court filing fee for Writ of Possession	120.00
Rekeying building and rental unit	918.75
Cleaning	125.00
March 2016 loss of rent	680.00
Filing fee paid for this Application	100.00
Less: security deposit	<u>(340.00)</u>
Monetary Order	\$3,210.51

Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$3,210.51 to serve and enforce upon the tenant.

The tenant's application against the landlord has been dismissed without leave to reapply.

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: November 04, 2016

Residential Tenancy Branch

