



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Landlord:	OPR MNR MNDC
	Tenant:	CNR

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord's Application was received at the Residential Tenancy Branch on September 14, 2016, and was amended on October 17, 2016 (the “Landlord's Application”). The Landlord applied for the following relief pursuant to the *Act*:

- a monetary order for unpaid rent or utilities;
- an order of possession for unpaid rent or utilities; and
- a monetary order for money owed or compensation for damage or loss.

The Tenant's Application was received at the Residential Tenancy Branch on September 13, 2016 (the “Tenant's Application”). The Tenant applied for an order cancelling a 10 Day Notice for Unpaid Rent or Utilities, dated September 2, 2016 (the “10 Day Notice”), pursuant to the *Act*.

The Landlord attended the hearing on his own behalf and was accompanied by his spouse, who did not provide testimony. The Tenant attended the hearing on her own behalf. Both parties giving evidence provided a solemn affirmation.

According to the Landlord, the Landlord's Application and Notice of a Dispute Resolution Hearing were served on the Tenant by registered mail on September 22, 2016. A Canada Post receipt was provided in support. Pursuant to section 90 of the *Act*, documents served in this manner are deemed to be received five days later. I find that the Tenant is deemed to have received the Landlord's Application and Notice of a Dispute Resolution Hearing on September 27, 2016.

In addition, the Landlord confirmed the amended application, including updated documentary evidence, received at the Residential Tenancy Branch on October 17, 2016, was served on the Tenant in person on October 17, 2016. According to the Landlord, the documents were served in the presence of a bailiff. The Tenant acknowledged receipt. I find that the Landlord's amended application and updated documentary evidence was served on the Tenant in person on October 17, 2016.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

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.

Preliminary and Procedural Matters

The Landlord amended his monetary claim to include expenses he incurred to remove the Tenant from the rental unit, and for cleaning and painting costs. Having been satisfied that the Tenant was duly served with the amended application and documentary evidence in support, I have proceeded on the basis that the Landlord has also applied for monetary relief for expenses incurred arising from the tenancy.

The Tenant was removed from the rental unit by a bailiff on October 17, 2016. Accordingly, it is not necessary for me to consider the Tenant's Application to cancel the 10 Day Notice further as the tenancy is over. Similarly, it is not necessary for me to consider the Landlord's request for an order of possession based on the 10 Day Notice.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

The parties confirmed the tenancy began on August 1, 2016, and ended on October 17, 2016. At all material times, rent in the amount of \$655.00 per month was due on the first day of each month.

The Landlord provided oral testimony in support of the monetary relief sought. First, the Landlord sought to be reimbursed \$1,000.00 for a deposit for bailiff services. According to the Landlord, the Tenant did not vacate the rental unit in accordance with an order of possession issued by an arbitrator following a hearing on October 7, 2017. The Landlord provided a copy of an email dated October 14, 2016, confirming the bailiff received a credit card payment from the Landlord for \$1,000.00.

In reply, the Tenant acknowledged she was removed from the rental unit on October 17, 2016. She stated she did not vacate the rental unit because she could not find somewhere else to live.

Second, the Landlord requested to be reimbursed \$120.00 for charges to file the order of possession at the BC Supreme Court registry. A receipt from the registry was provided in support.

In reply, the Tenant stated she did not understand, so the process of filing the order of possession was explained.

Third, the Landlord provided a receipt in the amount of \$10.98 for photocopying charges relating to this dispute resolution hearing and enforcing the order of possession issued on October 7, 2016. A receipt was provided in support.

In reply, the Tenant stated she did not receive 80 pages of file material.

Fourth, the Landlord submitted he is entitled to receive \$960.00 for labour to clean and paint the rental unit. He stated that, although the rental unit is a non-smoking unit, the Tenant smoked heavily. As a result, the rental unit was washed thoroughly with TSP and painted with sealant primer and paint to eliminate the odour of smoke and return the unit to a non-smoking unit. The Landlord provided a calculation used to determine the amount sought before the work was completed. When asked if it took less time to complete the work, the Landlord testified it took him longer than estimated but that he is willing to forego the additional amount.

In reply, the Tenant suggested the amount claimed appeared to be excessive for what she described as a 600-square-foot apartment. The Landlord corrected the Tenant and advised the rental unit is closer to 900-square-feet.

Fifth, the Landlord wishes to be compensated \$441.92 for the cost of supplies to repaint the rental unit. A receipt from a paint supply store was provided by the Landlord.

In reply, the Tenant asked if the Landlord used all of the paint, to which the Landlord responded that he had. The Tenant also asked the Landlord why the paint was purchased on September 22, 2016, before the tenancy had ended. The Landlord responded by testifying he felt confident the tenancy would be coming to an end, either as a result of the hearing which took place on October 7, 2016, or at the hearing conducted today.

Sixth, the Landlord seeks to be compensated \$241.00 for professional carpet cleaning to deal with the smell of smoke and stains in the carpet. A receipt from a professional carpet cleaner was provided in support.

The Tenant asked where the carpet cleaning company was located by did not make any further submissions in reply.

Finally, the Landlord has claimed \$1,965.00 for unpaid rent for the months of September, October and November 2016. He stated he posted an advertisement a few days prior to this hearing after completing the required cleaning and painting. A copy of the tenancy agreement was provided by the Landlord in support of rent due.

In reply, the Tenant questioned why rent should be payable for November 2016 as she was removed from the property on October 17, 2016.

Analysis

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

Section 67 of the *Act* permits me to order a party to pay compensation to the other if damage or loss arises from one party failing to comply with the *Act*, regulations or a tenancy agreement.

In this case, the Landlord has provided oral testimony concerning the end of the tenancy and the smell of smoke in the rental unit. He also provided documentary

evidence in support of each of the amounts claimed. Although the Tenant questioned some of the Landlord's expenses, she did not dispute the Landlord's evidence concerning the condition of the rental unit at the end of the tenancy. Accordingly, I find the expenses claimed by the Landlord for bailiff services, court registry fees, photocopying, cleaning and painting the rental unit to be appropriate.

The Landlord also seeks to be compensated for unpaid rent in the amount of \$1,965.00 for September, October and November 2016. According to the Landlord, the rental unit was just advertised a few days before the hearing on today's date. The Tenant did not dispute that she had not paid rent as alleged by the Landlord. Accordingly, I find the Landlord is not entitled to recover lost rental income for the month of November. The rental unit could have been advertised earlier, and the rental unit may still be rented for much of November 2016.

As the Landlord has been successful, I also find the Landlord is entitled to an award of \$100.00 as recovery of the filing fee.

In light of my findings above, I am satisfied the Landlord is entitled to a monetary order in the amount of \$4,203.90, which has been calculated as follows:

Claim	Amount
Bailiff services:	\$1,000.00
BC Supreme Court registry fees:	\$120.00
Photocopying:	\$10.98
Labour to clean and paint:	\$960.00
Paint and supplies:	\$441.92
Carpet cleaning:	\$241.00
September rent:	\$665.00
October rent:	\$665.00
Filing fee:	\$100.00
TOTAL:	\$4,203.90

Conclusion

The Tenant's Application is dismissed.

The Landlord is granted a monetary order in the amount of \$4,203.90. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 01, 2016

Residential Tenancy Branch

