



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF, SS

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; for an order permitting the landlord to serve documents in a different way than required by the *Act*; and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing with an agent and both gave affirmed testimony. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing and testimony and no one for the tenant attended the call. The landlord's agent testified that the tenant was served with the Landlord's Application for Dispute Resolution and notice of this hearing at a forwarding address provided by the tenant by registered mail on August 30, 2016, and has provided a copy of a Registered Domestic Customer Receipt bearing that date stamped by Canada Post. I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

During the course of the hearing, the landlord withdrew the application for an order permitting the landlord to serve documents in a different way than required by the *Residential Tenancy Act*, stating that the application was made in error.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy

agreement, and more specifically for damage to the rental unit, enforcement and Bailiff costs for enforcement of a Writ of Possession?

- Should the landlord be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that the tenant moved into the rental unit sometime in May, 2016 and paid a partial month's rent. The parties entered into a written tenancy agreement for a month-to-month tenancy to begin on June 1, 2016, a copy of which has been provided. Rent in the amount of \$1,050.00 per month was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$525.00 as well as a pet damage deposit in the amount of \$525.00, both of which are still held in trust by the landlord.

The landlord's agent further testified that the tenant failed to pay rent for the month of July, 2016 and the landlord was successful in obtaining an Order of Possession, and the landlord's claim for unpaid rent was dismissed with leave to reapply. A copy of a portion of the Decision of the director has been provided. The landlord had to obtain the services of a Bailiff to remove the tenant, and the Bailiff had to attend the rental unit from another community 4 times because the tenant wouldn't leave. A copy of a receipt from the Bailiff has been provided, and it shows that the original fee of \$160.00 was paid on August 8, 2016, and has written on the top, "Bailiff total \$750.00," which is the amount that the landlord ultimately paid and claims as against the tenant. Also provided is a Province of British Columbia receipt dated August 8 in the amount of \$125.00 for a Supreme Court filing. The tenant actually moved out of the rental unit near the end of August, 2016.

The landlord also claims \$2,000.00 for unpaid rent for the months of July and August, and the landlord's agent testified that the tenant paid \$100.00 of the \$2,100.00 owed for the 2 months.

The landlord also claims \$250.00 for a broken window, and the landlord's agent testified that the tenant left garbage in the rental unit, for which the landlord claims \$70.00 for landfill costs. No receipts have been provided, however the landlord's agent testified that copies could be provided after the hearing concludes.

The landlord testified that the Bailiff told the landlord to stay away while the Bailiff was attempting to enforce the Writ of Possession. The Bailiff obtained the tenant's forwarding address in writing and gave it to the landlord on August 16, 2016.

The landlord further testified that no move-in or move-out condition inspection reports were completed by the parties, but a walk-through was conducted by the parties at the beginning of the tenancy.

The rental unit was re-rented for September 1, 2016.

Analysis

I have reviewed the evidentiary material of the landlord, and I am satisfied that the landlord was successful in obtaining an Order of Possession for unpaid rent and a Writ of Possession. The landlord and the landlord's agent testified that the tenant wouldn't leave and the Bailiff had to attend 4 times. Therefore, I am satisfied, considering the dates on the receipts and the orders provided, that the landlord is owed \$2,000.00 for unpaid rent.

I accept the undisputed testimony of the landlord and the landlord's agent and am satisfied that the landlord has established the claims for Bailiff costs of \$750.00 and filing fees in the Supreme Court in the amounts of \$125.00.

Where a party makes a monetary claim for damages, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate any damage or loss suffered.

In the absence of any receipts for repair of a broken window or from the landfill, and in the absence of any move-in or move-out condition inspection reports, I am not satisfied that the landlord has established any of the elements in the test for damages, and the landlord's application respecting those claims is dismissed.

In summary, I find that the landlord has established a claim in the amount of \$2,000.00 for unpaid rent, \$750.00 for Bailiff costs and \$125.00 for Supreme Court costs to obtain a Writ of Possession. Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

I order the landlord to keep the \$1,050.00 deposits in partial satisfaction of the claim and I grant the landlord a monetary order for the difference in the amount of \$1,925.00.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$525.00 security deposit and the \$525.00 pet damage deposit, and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,925.00.

This order is final and binding and may be enforced.

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 02, 2016

Residential Tenancy Branch