



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord on June 6, 2016 for a Monetary Order for: unpaid rent; to keep the Tenant’s security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; and, to recover the filing fee from the Tenant.

The Landlord and his advocate appeared for the hearing and provided affirmed testimony as well as documentary and photographic evidence prior to the hearing. There was no appearance for the Tenant during the 22 minute duration of the hearing. As a result, I turned my mind to the service of the documents by the Landlord for this hearing. The Landlord testified that he personally served the Tenant with a copy of the Application and his evidence on June 12, 2016. Based on the undisputed evidence before me, I find the Landlord effected service on the Tenant pursuant to Section 89(1) (a) of the Act. The hearing continued to hear the undisputed evidence of the Landlord as follows.

Issue(s) to be Decided

- Is the Landlord entitled to rent not paid by the Tenant during this tenancy?
- Is the Landlord entitled to the cleaning costs?
- Is the Landlord entitled to keep the Tenant’s security deposit in partial satisfaction of the monetary claim?

Background and Evidence

The Landlord testified that this tenancy was on oral tenancy which started in August 2014 on a month to month basis. Rent was payable by the Tenant in the amount of \$1,200.00 on the first day of each month. The Tenant paid a security deposit of \$600.00

at the start of the tenancy which the Landlord still retains. No interest is payable on this amount.

The Landlord testified that during this tenancy, the Tenant failed to pay rent for the months of: July 2015; October 2015; and December 2015. The Landlord testified that the Tenant provided written notice in January 2016 to end the tenancy for the end of February 2016. However, the Tenant also failed to pay rent for the last month of the tenancy. Therefore, the Landlord now seeks to recover four months of unpaid rent in the amount of \$4,800.00. The Landlord was not provided with a forwarding address by the Tenant at the end of the tenancy.

The Landlord testified that at the end of the tenancy, the Tenant failed to clean the garden and the rental unit leaving lots of junk behind which the Landlord had to hire a company to clean. As a result, the Landlord claims for 6 hours at \$35.00 for the cleaning company he employed and \$18 hours at \$25.00 per hour for the time the Landlord spent cleaning the rental unit. The total amount claimed for cleaning by the Landlord is \$660.00. The Landlord provided three photographs into evidence to show the lack of cleaning performed inside and outside of the rental property which the Tenant was responsible for.

Analysis

The Act defines a “tenancy agreement” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit. Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above evidence, I find that the parties engaged into a month to month tenancy which is governed by the Act.

Section 26(1) of the Act requires a tenant to pay rent under a tenancy agreement whether or not the landlord complies with the Act. Based on the undisputed evidence before me, I accept the Landlord’s oral evidence that the Tenant failed to pay \$4,800.00 in rent which I hereby award to the Landlord.

Section 37(2) of the Act requires a tenant to leave a rental suite reasonably clean and undamaged at the end of a tenancy. Based on the Landlord’s undisputed oral and supporting photographic evidence, and in the absence of any evidence from the Tenant,

I accept the Tenant failed to leave the rental unit clean at the end of the tenancy. As a result, I award the Landlord the cleaning costs claimed in the amount of \$660.00.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the \$100.00 filing fee for the cost of this Application pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$5,560.00 (\$4,800.00 + \$660.00 + \$100.00).

As the Landlord already holds \$600.00 in the Tenant's security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 72(2) (b) of the Act.

As a result, the Landlord is issued with a Monetary Order for the remaining amount of \$4,960.00. This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make voluntary payment. Copies of this order are attached to the Landlord's copy of this Decision. The Tenant may also be held liable for any enforcement costs incurred by the Landlord.

Conclusion

The Tenant has breached the Act by not paying rent and failing to clean the rental unit. Therefore, the Landlord may keep the Tenant's security deposit and is granted a Monetary Order for the remaining balance in the amount of \$4,960.00. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: December 05, 2016

Residential Tenancy Branch