



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent, for a monetary Order for damage, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

In a decision dated September 12, 2016 a Residential Tenancy Branch Arbitrator granted the Landlord authority to serve documents to the Tenant by email at an email address provided in the decision.

The Agent for the Landlord stated that on September 15, 2016 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted with the Application were sent to the email address mentioned in the decision of September 12, 2016. She stated that on September 15, 2016 the Tenant responded to that email. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89(1)(e) of the *Residential Tenancy Act (Act)*; and the hearing proceeded in the absence of the Tenant.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, to compensation for unpaid rent, and to keep all or part of the security deposit?

Background and Evidence

The Agent for the Landlord stated that:

- the tenancy began on June 01, 2015;
- at the end of the tenancy the monthly rent was \$1,500.00;
- rent was due by the first day of each month;
- the Tenant paid a security deposit of \$837.50;
- on August 02, 2016 the Tenant informed the Landlord, via email, that he wished to end the tenancy on August 31, 2016;

- sometime after sending the aforementioned email the Tenant provided the Landlord with a signed notice to end tenancy, effective August 31, 2016;
- the rental unit was vacated on August 31, 2016;
- a condition inspection report was completed at the beginning of the tenancy;
- the Landlord attempted to schedule a final condition inspection report, via email, but the parties could not find a mutually agreeable time; and
- the Landlord completed a final condition inspection report, in the absence of the Tenant, on August 30, 2016.

The Landlord is seeking compensation for unpaid rent, in the amount of \$1,500.00, for September of 2016 due to the late notice to end tenancy provided by the Tenant. The Agent for the Landlord stated that the rental unit was advertised in the local paper on August 05, 2016, which is the first publishing date after the notice to end tenancy was received. The Agent for the Landlord stated that the unit was re-rented for November 01, 2016.

The Landlord is seeking compensation of \$40.00 in NSF fees, as the rent payment for September was not honoured by the Tenant's financial institution. The Agent for the Landlord stated that this claim is based on item #8 of the addendum to the rental unit, which stipulates that there will be a charge of \$40.00 for NSF payments.

The Landlord is seeking compensation, in the amount of \$390.00, for cleaning the rental unit. The Agent for the Landlord stated that the rental unit was very dirty at the end of the tenancy. The Landlord submitted an invoice to show that the Landlord was charged \$390.00 for cleaning the rental unit.

The Landlord is seeking compensation, in the amount of \$400.00, for repairs and painting. The Agent for the Landlord stated that there were a couple of holes in the walls at the end of the tenancy; there were several deep gouges in the walls; and there was a hole in one of the doors. The Landlord submitted an invoice to show that the Landlord was charged \$420.00 for repairing and painting the damage.

Analysis

On the basis of the undisputed evidence I find that the Tenant was required to pay \$1,500.00 in rent by the first day of each month; that on August 02, 2016 he informed the Landlord, via email, of his intent to vacate the rental unit on August 31, 2016; that sometime after August 02, 2016 he gave the Landlord a signed notice to end the tenancy on August 31, 2016; that he vacated the rental unit on August 30, 2016; and he did not pay rent for September of 2016.

Section 45 of the *Act* stipulates that a tenant may end a periodic tenancy by providing the landlord with written notice to end the tenancy on a date that is not earlier than one month after the date the landlord received the notice and is the day before the date that rent is due. To end this tenancy on August 31, 2016 in accordance with section 45 of

the *Act*, the Tenant was required to give notice of his intent to vacate on, or before, July 31, 2016.

Section 53 of the *Act* stipulates that if a tenant gives notice to end a tenancy on a date that is earlier than the earliest date permitted by the legislation, the effective date is deemed to be the earliest date that complies with the legislation. In these circumstances, the earliest effective date of the notice that was given on, or after, August 02, 2016 was September 30, 2016. Therefore, I find that the notice to end tenancy that was given in August of 2016 effectively ended this tenancy on September 30, 2016.

Section 26 of the *Act* stipulates that a tenant must pay rent when rent is due. As the Tenant had not properly ended this tenancy by September 01, 2016, I find that the Tenant was obligated to pay rent when it was due on September 01, 2016, even though he opted to vacate the rental unit prior to the effective date of the notice to end tenancy. I therefore grant the Landlord's application for unpaid rent from September of 2016.

Section 7(1)(d) of the *Residential Tenancy Regulation* stipulates that a landlord can charge a fee of not more than \$25.00 for a late rent payment. Section 7(2) of the *Residential Tenancy Regulation* stipulates that a landlord can only charge this fee if the tenancy agreement provides for this fee.

The addendum to the tenancy agreement for this rental unit provides for a \$40.00 NSF fee, which is not authorized by the *Residential Tenancy Regulation*. I find that the term of the tenancy agreement regarding late fees does not comply with the legislation, as it imposes a fee that is greater than \$25.00. I therefore find that the term is unenforceable and I dismiss the Landlord's application for a NSF fee of \$40.00.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to leave the rental unit in reasonably clean condition at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for the cost of cleaning the rental unit, which was \$390.00.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to leave the walls/doors in the rental unit in good condition at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for the full amount of the claim for the repairs, which was \$400.00.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$2,390.00, which includes \$790.00 in damages, \$1,500.00 in unpaid rent, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$837.50 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$1,552.50. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced 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 *Act*.

Dated: March 07, 2017

Residential Tenancy Branch

