



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Landlord:	MND MNR MNDC MNSD FF
	Tenant:	MNDC MNSD FF

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 May 8, 2017 (the “Landlord’s Application”). The Landlord applied for the following relief pursuant to the *Act*:

- a monetary order for compensation for damage to the unit, site or property;
- a monetary order for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss;
- an order allowing the Landlord to retain all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant’s Application was received at the Residential Tenancy Branch on December 8, 2016, and was amended by an Amendment to an Application for Dispute Resolution, received at the Residential Tenancy Branch on May 11, 2017 (the “Tenant’s Application”). The Tenant applied for the following relief pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord return all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing on her own behalf, as did the Tenant. Both parties provided affirmed testimony.

The Landlord testified that her Application package was served on the Tenant by registered mail on May 8, 2017. The Tenant acknowledged receipt a day or two later.

The Tenant testified that his Application package was served on the Landlord by registered mail on December 8, 2016. The Landlord acknowledged receipt. The Tenant submitted an additional evidence package, which included a USB stick. According to the Tenant, this package was served on the Landlord by registered mail on May 10, 2017. The Landlord acknowledged receipt.

I am satisfied that the documentary and digital evidence relied upon by the parties was sufficiently served for the purposes of the *Act*, pursuant to section 71 of the *Act*.

Neither party raised any issues with respect to service or receipt of the above documents and evidence. 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.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for compensation for damage to the unit, site or property?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
4. Is the Landlord entitled to an order allowing the Landlord to retain all or part of the security deposit or pet damage deposit in partial satisfaction of the Landlord's claim?
5. Is the Landlord entitled to an order granting recovery of the filing fee?
6. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
7. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?
8. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The Landlord submitted with her documentary evidence a copy of the tenancy agreement between the parties. It confirms a fixed term tenancy for the period from April 1, 2016 to March 31, 2017. Rent in the amount of \$1,489.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$700.00, which the Landlord holds.

The Landlord's Claim

The Landlord's monetary claim was summarized on a Monetary Order Worksheet, dated May 6, 2017. First, the Landlord claimed \$1,489.00 for unpaid rent for the month of October 2016. She testified the Tenant's rent cheque for October 2016 "bounced". According to the Landlord, the Tenant gave notice to end the tenancy on or about September 23, 2016. However, the Tenant vacated the rental unit until October 7, 2016, without paying rent for October 2016.

The Tenant did not dispute the Landlord's version of events, but testified that he stopped payment on the post-dated cheques due to issues that had come up during the tenancy.

Second, the Landlord claimed \$952.00 for repairs to the front entrance and the front door of the rental unit. She testified these were "perfectly fine" at the beginning of the tenancy but were damaged by the Tenant. In support, the Landlord provided a Condition Inspection Report. Although the Tenant attended the move-out inspection, the report was not signed by him.

The Tenant disagreed with this aspect of the Landlord's claim, citing several issues with the rental unit. Specifically, the Tenant directed me to several photographic images, included with his digital evidence that depicted repairs he had completed to one door, and how another door sat in the frame while closed.

The Condition Inspection Report suggests the Tenant agreed the Landlord could retain the \$700.00 security deposit. However, during the hearing, the Tenant confirmed this was not the case. Rather, he referred me to the date of signature, which was April 1, 2016, the date of the move-in condition inspection. He suggested this was a record of having paid the security deposit to the Landlord. The Landlord did not dispute the Tenant's testimony in this regard.

Third, the Landlord claimed \$1,056.71 for unpaid rent on a pro-rated basis from March 11 to 31, 2016. She testified that she and the Tenant agreed the Tenant would do some work around the rental unit, but that the work was never done. At another point during the hearing, the Landlord testified the rental unit was fully renovated before the tenancy began.

The Tenant testified the rental unit was not in move-in condition when he signed the tenancy agreement. Accordingly, he acknowledged he did some cleaning at the rental unit in March 2016, and moved a few items to the property that was left outside. However, he confirmed he did not sleep in the rental unit until April 6, 2016, which is when his bed arrived. The tenancy agreement also confirms the tenancy began on April 1, 2016.

The Tenant acknowledged he participated in the move-in and move-out condition inspections, but refused to sign the move-out report because he did not trust the Landlord. He wanted a second original copy for his records and testified that the Landlord refused to do so.

The Tenant's Claim

The Tenant's claim was summarized on Monetary Order Worksheets dated April 8 and March 10, 2017. First, the Tenant claimed \$1,400.00 for the return of double the security deposit. He claimed to have provided the Landlord with his forwarding address in writing but did not refer me to this correspondence in his documentary evidence. In reply, the Landlord testified that the Tenant was asked for his forwarding address but that he refused to provide it.

Second, the Tenant sought to recover bank charges totalling \$70.00 for stop payment requests. The Landlord disputed this aspect of the Tenant's claim, noting the payments were stopped at the Tenant's request, and without having paid rent for October 2016.

Third, there are a number of claims for items related to preparation for the dispute resolution hearing, which include USB drives that totalled \$22.38 and registered mail charges that totalled \$36.33.

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* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the *Act*. 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 what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on each party to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement. Once that has been established, the party must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the party did what was reasonable to minimize the damage or losses that were incurred.

The Landlord's Claim

With respect to the Landlord's claim to recover \$1,489.00 for October 2016 rent, I find the Tenant did not give adequate notice as required by section 45 of the *Act*. His notice, given on or about September 23, 2016, was effective on October 31, 2016. He was (and remains) obligated to pay rent for October 2016.

With respect to the Landlord's claim to recover \$952.00 for repairs, I find there is insufficient evidence upon which to base an award in her favour. Although a Condition Inspection Report was submitted into evidence, the move-out portion was not signed by the Tenant. Similarly, although a receipt was submitted into evidence, there was no

photographic evidence submitted by the Landlord confirming the condition of the rental unit at the end of the tenancy.

With respect to the Landlord's claim to recover rent from March 11 to 31, 2016, I find there is insufficient evidence to make such an award. The written tenancy agreement confirmed the tenancy began on April 1, 2016. There was insufficient evidence of an agreement with respect to rent or the completion of repairs or maintenance of the property by the Tenant.

In light of the above, and pursuant to section 67 of the *Act*, the Landlord is granted a monetary order in the amount of \$889.00, which is comprised of \$1,489.00 in unpaid rent and \$100.00 as recovery of the filing fee, *less* the \$700.00 security deposit held by the Landlord.

The Tenant's Claim

With respect to the Tenant's claim for double the security deposit, I find there is insufficient evidence to conclude the Tenant provided the Landlord with his forwarding address in writing, as required by section 38 of the *Act*. Although the Tenant asserted he did, the Landlord denied having received it.

With respect to the Tenant's claim for \$70.00 to recover stop payment charges, I find there is insufficient evidence before me to award this amount. The charges came about at the Tenant's request, when rent for October 2016 was being withheld.

With respect to the Tenant's claim to recover \$58.71 for charges related to his preparation for the dispute resolution hearing, I find these are not compensable. How a party chooses to prepare for the hearing, and the costs incurred, are to be borne by that party.

The Tenant's Application is dismissed.

Conclusion

The Landlord is granted a monetary order in the amount of \$889.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The Tenant's Application is dismissed.

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: June 8, 2017

Residential Tenancy Branch