



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Akers Property Solutions
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the tenant: MNDC, MNSD
For the landlord: MNR-S, MNDC-S, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenant applied for:

- compensation for a monetary loss or other money owed; and
- a return of his security deposit.

The landlord applied for:

- a monetary order for unpaid rent;
- compensation for a monetary loss or other money owed;
- authority to apply the tenant's security deposit toward any monetary award; and
- recovery of the filing fee.

The landlord/owner attended the teleconference hearing; however, the tenant did not attend.

The landlord testified that she served the tenant with their Application for Dispute Resolution and Notice of Hearing by registered mail, on or about January 21, 2020.

Based upon the undisputed submissions of the landlord, I accept the tenant was served notice of this hearing and the landlord's application in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenant's absence.

The hearing process was explained to the landlord and she was given an opportunity to ask questions about the hearing process. Thereafter, the landlord was provided the opportunity to present her evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-

In the absence of the tenant to present his application, pursuant to section 7.3 of the Rules, I dismiss the tenant's application, without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant, to offset a monetary award with the tenant's security deposit, and to recovery of the filing fee?

Background and Evidence

The landlord submitted that the tenancy began on or about October 1, 2019, and ended on or about January 14, 2020. The landlord said the tenant paid a security deposit of \$300. The landlord has retained the tenant's security deposit, having made this claim against it.

The landlord's monetary claim listed in her application is \$1,200 for unpaid rent and \$425 for cleaning and repairs.

Unpaid rent –

The landlord said that the monthly rent at fair market value for this rental unit was \$1,050; however, she said that the monthly rent was reduced due to the tenant's employment with the landlord, with that amount being \$650.

The landlord submitted that the tenant vacated the rental unit on January 14, 2020, without paying the monthly rent for January 2020.

In addition to the unpaid rent for January 2020, the landlord said the tenant was short for the months of October, November, and December 2019, in the amount of \$50 each.

Cleaning and repairs –

The landlord submitted that the tenant failed to properly and reasonably clean the rental unit prior to his departure, which caused the landlord to hire a cleaner, at a cost of \$250. The landlord submitted a copy of the cleaning invoice showing that amount, which was dated January 20, 2020.

The landlord submitted that the tenant damaged the rental unit while living there, which went beyond reasonable wear and tear. This caused the landlord to hire a repair company to perform such tasks as caulk the tub, patch and paint holes, rehang a baseboard heater, replace the smoke detector, fix the closet door, paint the walls, and purchase paint supplies.

The landlord submitted a copy of the invoice, dated January 27, 2020, showing an amount paid of \$223.13.

The landlord said that the parties had a move-in inspection and the tenant was offered, but refused, a move-out inspection.

The landlord also submitted photos taken inside and outside the rental unit, after the tenant vacated.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that occurs as a result of their actions or neglect, so long as the applicant verifies the loss, as required under section 67. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

In light of the tenant's failure to appear to provide a rebuttal to the landlord's evidence or support his own application, despite being duly served, I accept the landlord's undisputed evidence.

Unpaid rent –

Under section 26 of the Act, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In the case before me, I accept the landlord's undisputed evidence that the tenant owed rent and failed to pay rent in accordance with the terms of the tenancy agreement, for the month of January 2020.

I also accept the landlord's undisputed evidence that the tenant was deficient in his monthly rent for October, November, and December 2019, in the amount of \$50 each month.

As to the amount claimed, in this case, it appears the landlord is seeking the amount of \$1,050 as unpaid rent for January 2020; however, that amount is the fair market value for the rental unit in the event the tenant no longer was under the employ of the landlord.

I find the landlord did not submit sufficient evidence to show that the tenant was no longer working for the landlord, which according to the landlord would increase the tenant's monthly rent obligation to \$1,050.

I therefore decline to award the landlord the portion over and above the beginning monthly rent of \$650; however, I find the landlord has established a monetary claim of \$650 for unpaid rent for January 2020.

I also find the landlord submitted sufficient undisputed evidence to support her claim for the rent deficiency of \$150, comprised of \$50 for months of October, November, and December 2019, each. The landlord is awarded the amount of \$150.

Cleaning and repairs –

As to the costs claimed by the landlord associated with cleaning and repairing, Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

As such, the tenant is required to remove all belongings including furniture and to clean the rental unit to a reasonable standard.

I find the landlord submitted sufficient documentary and photographic evidence that the tenant failed to properly and reasonably clean the rental unit or leave it undamaged, which required the landlord to clean and repair the rental unit, incurring fees.

The landlord's monetary claim in their application for cleaning and repairing was \$425 and when I reviewed the landlord's invoices for these costs, the total actual costs were \$473.

I find the landlord submitted sufficient evidence to support her claim and that these costs were reasonable. The landlord, however, did not amend her application increasing the monetary claim.

As the respondent would only know that the claim was \$425, as listed in the application, I find it reasonable to award the landlord the amount of \$425.

I grant the landlord recovery of their filing fee of \$100.

Due to the above, I find the landlord is entitled to a total monetary award of \$1,325 against the tenant, comprised of unpaid rent of \$650 for January 2020, a rent deficiency of \$150 for the months of October, November, and December 2019, or \$50 each, cleaning and repairing for \$425, and recovery of their filing fee for \$100.

At the landlord's request, I direct them to retain the tenant's security deposit of \$300 in partial satisfaction of their monetary award of \$1,325, pursuant to section 72(2)(b) of the Act.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$1,025.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is advised that costs of such enforcement are subject to recovery from the tenant.

Conclusion

The landlord's application for monetary compensation is granted, they have been authorized to retain the tenant's security deposit of \$300, and they have been awarded a monetary order for the balance due, in the amount of \$1,025.

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 11, 2020

Residential Tenancy Branch