



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, 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 money owed or compensation for damage or loss; 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.

The Landlord stated that on January 15, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence was personally served to the Tenant. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing. These documents were accepted as evidence for these proceedings.

The Landlord submitted documents and photographs to the Residential Tenancy Branch on April 22, 2014. He stated that copies of these documents were personally served to the Tenant on April 17, 2014. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 88 of the *Act* and they were accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent/loss of revenue; for compensation for damage to the rental unit; and to retain all or part of the security deposit paid by the Tenant?

Background and Evidence

The Landlord stated that this tenancy began on March 15, 2007; that the Tenant was required to pay rent of \$1,000.00 by the first day of each month; and that the Tenant paid a security deposit of \$500.00 on March 15, 2007.

The Landlord stated that on September 11, 2013 he personally served the Tenant with a One Month Notice to End Tenancy for Cause, which required her to vacate the rental unit on October 31, 2013. He stated that when he went to the rental unit on October 01, 2013 he discovered that she had vacated the rental unit and that he had no prior notice of her intent to vacate on that date.

The Landlord stated that the Tenant did not provide her with a forwarding address, in writing, although she did provide one verbally.

The Landlord is seeking compensation for unpaid rent, in the amount of \$5,535.00.

The Landlord stated that prior to the end of 2009 the rent was in arrears by \$1,200.00. He submitted a spread sheet that shows the rent was in arrears by \$1,000.00 prior to November 01, 2009 and that arrears increased to \$1,200.00 by December 15, 2009.

The Landlord stated that Tenant paid \$7,925.00 in rent for 2010, although \$12,000.00 was due. He provided a spread sheet for this year, which shows that the rent is in arrears by \$3,815 for 2010.

The Landlord stated that Tenant paid \$9,730.00 in rent for 2011, although \$12,000.00 was due. He provided a spread sheet for this year, which shows that the rent is in arrears by \$2,270 for 2011.

The Landlord stated that Tenant paid \$12,725.00 in rent for 2012. He provided a spread sheet for this year, which shows that one month's rent was "forgiven" as a wedding gift.

The Landlord stated that Tenant paid \$10,800.00 in rent for 2013, although only \$9,000.00 was due. He provided a spread sheet for this year.

The Landlord is seeking late fees for each time the Tenant was late paying her rent. The Landlord stated that the tenancy agreement requires the Tenant to pay a late fee of \$25.00 each time the rent is not paid on time, although that agreement was not submitted in evidence. Although it is unclear to me, on the basis of the documentary evidence submitted, how much the Landlord is claiming for late fees, the Landlord declared at the hearing that he is seeking \$1,400.00 in late fees.

The Landlord is seeking compensation for lost revenue for the month of October. He stated that he has still not rented the unit and that he did not advertise the rental unit because he is renovating the unit.

The Landlord is seeking compensation, in the amount of \$208.00, for two windows that were broken in 2012 and \$258.00 for one window that was broken in 2013. The Landlord stated that the Tenant agreed to pay for these repairs but she has not done so. The Landlord submitted no receipts to establish the cost of these repairs.

The Landlord submitted a "promissory note" which the Tenant appears to have signed on November 13, 2013. In the document the Tenant acknowledged that she owed \$5,831 in rental arrears, late fees, and repair costs. The Landlord stated that the repairs in the promissory note relates to the cost of repairing the windows.

The Landlord is seeking compensation, in the amount of \$50.00, for the 2.5 hours he spent communicating with the Tenant to ensure she had her van removed from the rental property. He stated that the Tenant advised him the van had been sold. He stated that the new owner removed the van on October 13, 2013.

The Landlord is seeking compensation, in the amount of \$50.00, for the 2.5 hours he spent communicating with the Tenant to ensure she had her trailer removed from the rental property. He stated that the Tenant advised him the van had been sold and that he eventually delivered the trailer to the new owner. He stated that it took him approximately 2.5 hours to deliver the trailer, for which he is seeking compensation of \$50.00.

The Landlord is seeking compensation, in the amount of \$500.00, for cleaning the rental unit and property. He stated that he spent approximately 6 hours removing and disposing of personal property and garbage left in the unit and on the property by the Tenant; cleaning the rental unit; and mowing the lawn. He stated that he was helped by 4 friends, each of whom spent approximately 4 hours.

The Landlord is seeking compensation, in the amount of \$1,500.00, for cleaning dog feces from the deck and repairing the deck on the rental unit. He stated that the Tenant regularly used a hose to clear dog feces from the deck; that the feces/water ran down the side of the deck; and that the water/feces caused the deck to rot. He stated that the portion of the deck that was impacted by water/feces was approximately 90% rotten and the portion that was less impacted by the feces was only 50% rotten. He estimates this deck was built 12 years ago.

The Landlord stated that he spent approximately 20 hours removing the feces and rebuilding the deck, although the deck is not yet complete. He estimates that it will take him another 40 hours to rebuild the deck. He stated that he spent approximately \$300.00 on supplies for the deck, although he submitted no receipts for those supplies.

The Landlord is seeking compensation, in the amount of \$500.00, for repairing the walls in the rental unit. He stated that there were at least 6 holes in the walls, ranging from the size of a door handle to approximately 1'X1'. He estimates that the rental unit was last painted in 2007.

The Landlord stated that he spent approximately 14 hours repairing the walls and 6 hours repainting the walls. He stated that he spent approximately \$100.00 on supplies to repair the walls.

Analysis

On the basis of the undisputed evidence, I find that the Tenant agreed to pay monthly rent of \$1,000.00 and that rent was in arrears by \$1,200.00 by the end of 2009.

On the basis of the undisputed evidence, I find that the Tenant was obligated to pay rent of \$44,000.00 for the period between January 01, 2010 and September 30, 2013, and that only \$41,180.00 was paid. I therefore find the rent for this period is in arrears by \$2,820.00.

Section 26 of the *Act* requires tenants to pay rent when it is due. I therefore find that the Tenant currently owes the Landlord \$4,020.00 in unpaid rent.

I note that when determining the amount of rent owing I have relied solely on the information provided regarding the amount of rent due and the amount of rent paid. I have placed limited weight on the calculations provided in the spread sheets, as I cannot conclude they are entirely accurate. In reaching this conclusion I note that the spread sheet shows the rent of \$12,000.00 was due for 2012 although the spread sheet clearly shows that one month's rent was "forgiven" as a wedding gift, which means only \$11,000.00 in rent was due for 2012.

I further note that even if I relied entirely on the spread sheets provided by the Landlord and I accepted that the Tenant owed \$12,000.00 in rent for 2012, the total rent arrears would be \$5,743.00, not the \$5,535.00 being claimed by the Landlord. As I have limited faith in the accuracy of the spread sheets, I found it best to rely strictly on the amounts paid and the amounts due.

Section 7 of the *Residential Tenancy Regulation* specifies that a landlord may only collect a fee for paying the rent late if tenant agrees to pay that fee in the tenancy agreement. I find that the Landlord has submitted insufficient evidence to establish that the tenancy agreement requires the Tenant to pay a fee when the rent is not paid on time. I therefore dismiss the Landlord's claim to collect late fees.

In reaching this conclusion I was heavily influenced by the fact the agreement was not submitted in evidence. In my view, when a landlord is seeking to enforce a term of a tenancy agreement which the legislation specifically requires to be outlined in the tenancy agreement, such as a late fee, it is incumbent upon a landlord to provide a copy of the tenancy agreement whenever the Landlord is seeking to enforce that term.

I find that the Tenant failed to comply with section 45 of the *Act* when she failed to provide the Landlord with written notice of her intent 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 September 30, 2013 in compliance with section 45 of the *Act*, the Tenant would have had to provide written notice to the Landlord on, or before, August 31, 2013. As the Tenant did not give written notice to the Landlord, I find that this tenancy should have continued until

October 31, 2013, which is the effective date of the One Month Notice to End Tenancy that the Landlord served to the Tenant.

A landlord may be entitled to compensation if the landlord loses revenue for a month due to inadequate notice to end a tenancy, providing the landlord attempts to mitigate this loss. Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss.

In these circumstances, I find that the Landlord did not take reasonable steps to minimize his loss. I find that the Landlord's decision not to immediately advertise the rental unit upon learning it was vacant significantly contributed to the loss of revenue experienced. I find it entirely possible that if he had immediately advertised the unit he would have found a new occupant for October of 2013. I therefore dismiss the Landlord's claim for lost revenue.

In making this determination I did consider the condition of the rental unit at the end of the tenancy. Although I accept there were some damages to the unit, I am not convinced that the rental unit could not have been prepared for occupation reasonably quickly. In determining this matter I note that the photographs submitted in evidence by the Landlord are of extremely poor quality and do not allow me to make an independent assessment of the condition of the unit.

In making this determination I was influenced by the Landlord's testimony that it only took him 6 hours to clean the home and yard, with the help of four friends who each worked for approximately 4 hours each. This causes me to conclude that the rental unit could have been rendered reasonably suitable to occupy within one day.

In making this determination I considered the testimony that the walls needed repair and painting. On the basis of the testimony regarding those damages, I find that the damages could have been repaired quite quickly and should not have prevented a new person from occupying the rental unit. I note that the painting may have taken somewhat longer but, given that the rental unit had not been painted since the start of the tenancy, that delay is not the responsibility of the Tenant.

In making this determination I considered the testimony that there was a vehicle and trailer left on the property and that the deck needed repair. I find that this did not prevent a new person from occupying the rental unit.

In making this determination I considered the testimony that the Landlord is still renovating the rental unit and has not yet attempted to rent it. This causes me to conclude that the Landlord did not intend to immediately re-rent the unit and it was that decision that primarily led to the lost revenue for October of 2013, rather than the late notice provided by the Tenant.

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 a damage or loss occurred; 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 three windows were damaged during this tenancy and that the Tenant failed to comply with section 32 of the *Act* when she failed to repair those windows.. In addition to establishing that the rental unit was damaged, a landlord must also accurately establish the cost of repairing the damage whenever compensation for damages is being claimed. In these circumstances, I find that the Landlord failed to establish the true cost of repairing the windows. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence, such as receipts, that corroborates the Landlord's statement that it cost \$466.00 to repair the windows.

As the Landlord has failed to establish the cost of repairing the windows, I dismiss the claim of \$466.00 for repairing the windows. I do grant the Landlord nominal damages in the amount of \$1.00. This award is not intended to compensate the Landlord for the cost of repairing the windows. Rather, it is simply intended to acknowledge that the Tenant failed to comply with her responsibility to repair the windows.

In reaching this conclusion I have placed no weight on the "promissory note" in which the Tenant agreed that she owed \$5,831.00 for rental arrears, late fees, and repair costs. In reaching this conclusion I note that the Landlord contends that the Tenant owes \$5,535.00 in rental arrears and \$1,400.00 in late fees. This exceeds the \$5,831.00 acknowledgment of debt. I am therefore unable to rely on this note to determine specifically how much the Tenant acknowledged she owes for repair costs.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37 of the *Act* when she failed to remove her van and trailer from the property at the end of the tenancy, and that the van was removed by a third party on October 13, 2013. While I accept that the Landlord spent some time communicating with the Tenant in regards to moving the van and trailer, I find that this is one of the tasks associated with being a landlord. I find it unlikely that the Landlord spent a total of 5 hours communicating with the Tenant in regards to the van and trailer, given that the van was removed on October 13, 2013. I therefore find that the Landlord is not entitled to any compensation for the time he spent discussing these issues with the Tenant.

I do find that the Landlord is entitled to compensation for the 2.5 hours he spent removing the trailer from the property. I find that he should be compensated at an hourly rate of \$25.00, which I find to be reasonable compensation for labour of this nature. I therefore find that the Landlord is entitled to \$50.00 compensation for moving the trailer.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37 of the *Act* when she failed to leave the rental unit and property in reasonably clean condition at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for the six hours he spent cleaning the rental unit and the four people who assisted him are also entitled to compensation for the total of 16 hours they spent assisting him. I find it reasonable to compensate them at an hourly rate of \$25.00.

As the Landlord and his friends are entitled to total compensation of \$550.00, I find that the Landlord is entitled to the full amount of his claim for cleaning the unit and property, which is \$500.00. I am unable to award the Landlord compensation in the amount of \$550.00, as the Landlord has only claimed \$500.00.

On the basis of the undisputed evidence, I find that the deck at this rental unit is in need of replacement and that the Tenant regularly cleared dog feces off the deck with a hose. I find, however, that the Landlord submitted insufficient evidence to establish that the deterioration of the deck is directly related to the dog feces. As the Landlord has failed to establish that the deterioration is directly related to the dog feces, I dismiss the Landlord's claim for replacing the deck.

In determining this matter I was influenced, in part, by the testimony that this deck is approximately 12 years old and that the part of the deck that was not directly impacted by dog feces was approximately 50% rotten. This causes me to conclude that the deck is in need of replacement, at least in part, as a result of normal wear and tear.

In determining this matter I was further influenced by the absence of evidence that corroborates the Landlord's suspicion that the feces and hosing of the feces damaged the deck. I note that a deck is typically designed to be exposed to water and I cannot, therefore, conclude that using a hose on the deck would cause it to deteriorate. I also note that the photographs of the deck that were submitted in evidence are of little evidentiary value, as they are of very poor quality. I am therefore unable to rely on those photographs to determine whether the feces contributed to the damage to the deck.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37 of the *Act* when she failed to repair the walls that were damaged during the tenancy. I therefore find that the Landlord is entitled to compensation for the 14 hours he spent repairing the damage to the walls. I find that he should be compensated at an hourly rate of \$25.00, which I find to be reasonable compensation for labour of this nature. I therefore find that the Landlord is entitled to \$350.00 compensation for repairing the walls.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of interior paint is four years. The evidence shows that the living room was painted at the beginning of the tenancy and was, therefore over six years old at the end of the tenancy. As the paint had exceeded its "useful life", I find that the Landlord would have had to repaint the unit at the end of the tenancy and that he is not, therefore, entitled to compensation for the time he spent painting the unit.

I find that the Landlord failed to establish that he paid \$100.00 for supplies to repair the walls. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence, such as receipts, that corroborates the Landlord's statement that he paid this amount. I therefore dismiss his claim to recover these costs.

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

Conclusion

The Landlord has established a monetary claim, in the amount of \$5,021.00, which is comprised of \$4,020.00 in unpaid rent, \$1.00 in nominal damages, \$900.00 for damage to the rental unit, and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I authorize the Landlord to retain the security deposit of \$500.00 plus interest of \$13.59, in partial satisfaction of this monetary claim. Based on these determinations I grant the Landlord a monetary Order for the balance of \$4,507.41. In the event that the Tenant does not 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 *Residential Tenancy Act*.

Dated: April 30, 2014

Residential Tenancy Branch

