



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for a monetary order for damage to the unit, site or property and for unpaid rent, as well as for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenant for the cost of this application.

The landlord provided an evidence package in advance of the hearing, and also provided same to the tenant. Both parties gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. All evidence and information provided has been reviewed and is considered in this Decision.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit, site or property?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agree that this tenancy began as a fixed term tenancy which commenced on February 1, 2009 and expired on January 31, 2010, and then continued on a month-to-month basis. A tenancy agreement was prepared, signed by the parties, and contains an addendum. Rent in the amount of \$1,875.00 was payable in advance on the 1st day of each month, and the landlord collected a security deposit on January 29, 2009 in the amount of \$937.50 and a pet damage deposit in the amount of \$200.00

which was collected on January 30, 2009. The tenant vacated the unit on April 26, 2010. No move-in condition inspection report had been completed, nor was one completed at the end of the tenancy.

The landlord testified that in February, 2010, the tenant failed to pay rent. He also testified that the tenant had given written notice to vacate the unit by April 1, 2010, a copy of which was provided in advance of the hearing, but he is not sure of the date it was received nor is the note dated. He further testified that the tenant had not found another rental unit so it was agreed that she could stay for another month.

The tenant further failed to pay rent in the month of April, 2010. A 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued on April 20, 2010 for \$3,750.00 of unpaid rent, which had an expected vacancy date of April 30, 2010. That notice was served on the tenant by posting it to the door of the rental unit on or about April 20, 2010. On April 25, 2010 the landlord had still not received the outstanding rent, so he deactivated the key fob that allowed the tenant into the condominium building. The tenant paid \$500.00 on April 26, 2010 and the landlord then re-activated the key fob. He stated that he had an agent deal with the tenancy however the agent was not in attendance to provide his testimony. The landlord had not learned that the tenant had moved out until May 5, 2010.

The landlord stated that he is abandoning a portion of his claim for damage to a garage in the amount of \$1,500.00 because he learned that the damage was caused by a previous tenant.

The landlord is claiming \$1,875.00 for rent for February, \$1,375.00 for rent for April, as well as late fees in the amount of \$25.00 for each of those months, reimbursement of 2 fines in the amount of \$50.00 each levied by the strata corporation for the tenant's roommate being passed out in the hallway, and for having an uninsured motor vehicle in the parking garage. The landlord also testified that the tenant did not return the mailbox keys, suite keys or key fob and is claiming \$80.00 for replacing the lock on the mailbox, \$50.00 for the key fob, and \$6.58 for the storage room and suite key. When questioned

about the tenant's roommate, the landlord testified that the roommate had originally been on the tenancy agreement, but had moved out, and is not named in the landlord's application.

The landlord received an email from the tenant on May 25, 2010 which contained her forwarding address. He filed for dispute resolution claiming against the security deposit prior to that date.

The tenant testified that she did not deal with the landlord, but his agent. She stated she had given post dated cheques to the agent, but those ran out at the end of the fixed term. She testified that she paid the agent cash on February 5, 2010 for the full amount of the rent and a \$25.00 late fee because he told her that she had to under the tenancy agreement and she did not question it.

She further testified that after receiving the notice to end the tenancy, she contacted the agent who told her that the payment she made in February was for March however she disagreed and stated that she paid the rent for March at his office on March 1, 2010 when she gave her written notice to vacate the unit. The tenant agrees that she owes \$1,375.00 for the month of April, 2010, having only paid \$500.00 for that month.

She also testified that her car did not have any insurance, and it was towed on November 17, 2009 without her knowledge; she received no warning about the fines and did not receive a copy of the by-laws from the landlord.

Analysis

Firstly, dealing with the unpaid rent, I find that the landlord has not complied with Section 26 (2) of the *Residential Tenancy Act* which states that a landlord must provide a tenant with a receipt for rent paid in cash. No receipts were issued, nor did the landlord provide evidence of when rent payments were made, what late fees were charged, which may have been contrary to the Tenancy Agreement, and I find that the landlord has failed to establish that rent was not paid for the month of February, 2010. I do find, however, that the tenant failed to pay rent in the amount of \$1,375.00 for the

month of April, 2010, and the landlord is entitled to recover that amount from the tenant. The Tenancy Agreement does not provide for late fees, and therefore, I find that the landlord is not entitled to claim those amounts.

I have examined the Tenancy Agreement, and I find that the addendum requires that the tenants comply with the condominium bi-laws however it's difficult for a tenant to comply without seeing a copy. I find that the landlord was remiss in not providing a copy to the tenant, and for that reason, I decline to award the landlord recovery of the \$50.00 fine for the uninsured motor vehicle. Further, the tenant named in this application was not the tenant passed out in the hallway, and I decline to order that the tenant pay the \$50.00 fine for that infraction.

The addendum to the Tenancy Agreement also states that the tenant is required to pay \$10.00 for replacement of any individual key, and therefore I decline to order that the tenant pay the landlord \$80.00 for changing the lock on the mailbox. I do find, however that the tenant did not return the storage room and suite key, nor the mailbox key or key fob to access the building, and I am satisfied that the landlord has established a claim for \$70.00.

The landlord has also applied for an order permitting him to retain the security deposit in partial satisfaction of the claim. I refer to Sections 23, 24, 35 and 36 of the *Residential Tenancy Act* which places the onus on the landlord to conduct move-in condition inspections and move-out condition inspections. The *Act* also states that if the landlord fails to complete those inspections with the tenant present, the right of the landlord to claim against the security deposit or pet damage deposit or both is extinguished. Further, the landlord is only permitted to claim against a pet damage deposit for damage claims caused by a pet, and I've heard no evidence about damage caused by a pet. In the circumstances, I find that the landlord's failure to complete and schedule those inspections has resulted in his right to claim against the deposits currently held in trust being extinguished. The landlord, therefore, has an obligation to return those deposits to the tenant.

Since the landlord has been partially successful with his claim, the landlord is entitled to recovery of the \$100.00 filing fee.

Having found that the landlord owes the tenant \$1,137.50, and the tenant owes the landlord \$1,545.00, pursuant to my authority under Section 72 of the *Act*, I order that the amounts be set-off from one another.

Conclusion

For the reasons set out above, I order that the tenant pay to the landlord the sum of \$407.50. This order may be filed in the Provincial Court of British Columbia, Small Claims division for enforcement 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: September 23, 2010.

Dispute Resolution Officer