



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, 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; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement; 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 parties attended the conference call hearing, gave affirmed testimony and were given the opportunity to cross examine each other on their evidence.

The landlord and the tenant each provided an evidence package to the Residential Tenancy Branch which was received late according to the Residential Tenancy Branch Rules of Procedure. The package provided by the landlord was not provided to the tenant, and therefore is not considered in this Decision. With the landlord's consent, the evidence package provided by the tenant is considered in this Decision. All evidence and information provided, with the exception of the landlord's late evidence that has not been provided to the tenant, 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 or utilities?

Is the landlord entitled to a monetary order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement?

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

Background and Evidence

This fixed-term tenancy began on November 1, 2009 and was to expire on October 31, 2010. The tenancy ended on May 31, 2010 after the tenant gave notice prior to May 1, 2010 that he would be moving from the rental unit.

Rent in the amount of \$1,225.00 was payable in advance on the 1st day of each month. The landlord collected a security deposit from the tenant in the amount of \$612.50 on October 15, 2009. A move-in condition inspection report was completed at the outset of the tenancy, and a move-out condition inspection report was completed at the end of the tenancy.

The landlord's agent testified that the unit was re-rented on June 23, 2010, and provided copies of invoices for advertisements in The Province newspaper and listings for rentals on Craig's List. The landlord is claiming a pro-rated amount of \$898.33 for the month of June, 2010, as well as \$300.00 for liquidated damages, as provided for in the tenancy agreement. He further testified that the tenant had agreed to pay for the carpet cleaning, in the amount of \$65.00, and that the landlord always cleans carpets when a tenant moves out. When questioned about a water leak in the apartment during the tenancy, the landlord's agent confirmed that the tenant had called him and the carpet was soaked. The landlord is claiming \$1,313.33, which includes the \$50.00 filing fee for the cost of this application, and requests an order permitting him to retain the security deposit and receive a monetary order for the balance of \$700.83.

The tenant testified that in mid-February, 2009 he moved into the building and rented a suite over the service entry on the third floor. He found that people used the service entry at all hours of the day and night instead of the main entry. It was very noisy and the tenant could not sleep, nor could the landlord's agent. On November 1, 2009 he moved into this rental suite, which was quieter, but the temperature was too hot and

unliveable. He kept the thermostat off but the pipes in the walls were heated which radiated in the bedroom and the bathroom. As a result, the tenant slept in the living room and had to keep the bedroom and bathroom doors closed.

He further testified that the outside door to the building was supposed to be accessible with a key, but the handle was broken or bent, and when the knob was turned in one direction while opening it, it would not latch again and anyone could enter the building. He also told the landlord about it, and felt uncomfortable knowing that the building was insecure. Further, more often than monthly, 2 of the elevators would be out of service.

The tenant further testified that he found his car trunk open and doors unlocked at least a couple of dozen times. He found it very disturbing. Two other tenants in the building also told him that they saw the trunk open; one closed it and the other stated that he thought the owner of the vehicle left it that way intending to return. The tenant spoke to the landlord's agent about it and asked him to record it. The tenant's vehicle is a 1991 Cadillac in pristine condition. He did not notice anything missing, which is why he didn't report it to the police. He had the car checked and serviced, and nothing was wrong with the trunk or doors, and he found the trunk open and doors unlocked even after servicing it. He stated that it has not happened since he moved from this complex.

The tenant feels he was justified in breaking the agreement.

Analysis

I have reviewed the tenancy agreement, and find that the contract contains a clause for liquidated damages in the amount of \$300.00 to cover administration costs in the event of an end to the tenancy by the tenant in advance of the fixed term. The agreement also states that the tenancy runs from November 1, 2009 to October 31, 2010 and is initialled by the tenant, however the box that states that it's a fixed term is not checked off. Further, the tenancy agreement states that a notice by the tenant for ending the tenancy must include the specific grounds for ending the tenancy, if the tenant is ending a tenancy because the landlord has breached a material term of this tenancy. I find that

that portion of the tenancy agreement is not in compliance with the *Residential Tenancy Act*. Section 52 of the *Act* specifically states that the tenant's notice does not require the grounds for ending the tenancy, and I also find that the landlord's tenancy agreement therefore is a contract outside the *Act*. I also find, in the circumstances that the parties voluntarily entered into a fixed-term tenancy from November 1, 2009 to October 31, 2010, and therefore the landlord is entitled to recover liquidated damages in the amount of \$300.00 as set out in the tenancy agreement.

With respect to the tenant's evidence that he was justified in breaking the agreement, I have no evidence before me that the landlord did anything after being alerted to the vehicle break-ins, and I have no evidence before me that the tenant tried to mitigate by reporting them to the police. It is unknown how the trunk and doors of his car were opened, and reporting the instances to the police, even if nothing was missing, might have assisted. I also find that if the unit was uncomfortable due to the consistent temperature and noise from the service entry, the tenant was at liberty to request another unit, which he had done previously. Therefore, I cannot find that the tenant was justified in breaking the agreement.

With respect to the landlord's claim for damages to the unit, site or property, I find that the landlord has failed to establish that the tenant should be responsible for carpet cleaning. There is no evidence before me that the tenant smoked or had pets, and the tenant clearly lived in the rental unit for less than one year. Further, I have no evidence before me that the carpet was soiled beyond reasonable wear and tear, the carpets had been soaked by a previous leak in the building, and therefore the landlord's application for a monetary order for carpet cleaning cannot succeed.

I find that the landlord has established a claim for \$898.33 in unpaid rent and \$300.00 in liquidated damages. The landlord is also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, I order that the landlord retain the security deposit and interest of \$612.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$635.83. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

The landlord's claim for a monetary order for damage to the unit, site or property is hereby dismissed without leave to reapply.

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: November 08, 2010.

Dispute Resolution Officer