



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 damage or loss 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.

An agent for the landlord company attended the conference call hearing, gave affirmed testimony and provided evidence in advance of the hearing. Despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on June 30, 2010, the tenant did not attend. All 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 or utilities?

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

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

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on January 1, 2007 and ended on June 30, 2008. The landlord filed the Landlord's Application for Dispute Resolution on June 30, 2010. Rent in the amount of \$675.00 per month was payable under the tenancy agreement in advance on the 1st day of each month. The landlord collected a security deposit from the tenant in the amount of \$325.00 on November 26, 2006.

The landlord's agent testified that the tenant made a rent payment on May 17, 2008 which was returned by the bank for non-sufficient funds. The tenant then made 2 payments, and the 2nd one in the amount of \$300.00 was also returned N.S.F. The tenant paid \$600.00 for the rent due in June, 2008, leaving a balance owing for that month of \$75.00. A copy of the tenancy agreement was provided in advance of the hearing, which has attached to it a document entitled, "Schedule "B" Residential Tenancy Agreement Rules and Regulations." That document states that returned and not sufficient fund cheques, and failure to pay rent on the due date, are subject to a minimum service charge of \$25.00, and contains tenant initials. The landlord is claiming \$375.00 for unpaid rent for June, 2008 and \$25.00 for the N.S.F. fee for the payment made in May.

The landlord's agent further testified that a move-in condition inspection report was completed by the parties on December 31, 2006 and a move-out condition inspection report was completed by the parties on June 30, 2008. A copy of that document was provided in advance of the hearing and it contains signatures of the tenant and the resident manager on those dates. Further, if tenants are in a unit for over a year, the landlord cleans the blinds. She further testified that the tenant refused to provide a forwarding address. The landlord is claiming \$138.60 for cleaning blinds, but provided no evidence of whether or not the blinds were left in a state that required the tenant to clean them, or if the blinds were left in a state that was beyond normal wear and tear.

Analysis

I find that the first test to be met with respect to the landlord's application is whether or not the application has been filed within the time allowed by statute. The *Residential Tenancy Act* states as follows:

- 60** (1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.
- (2) Despite the Limitation Act, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).
- (3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a difference dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

The *Interpretation Act* states as follows:

- 25** (1) This section applies to an enactment and to a deed, conveyance or other legal instrument unless specifically provided otherwise in the deed, conveyance or other legal instrument.
- (2) If the time for doing an act falls or expires on a holiday, the time is extended to the next day that is not a holiday.
- (3) If the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.
- (4) In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.
- (5) In the calculation of time not referred to in subsection (4), the first day must be excluded and the last day included.

Because the *Residential Tenancy Act* does not express the calculation of time as clear days, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, then subsection (5) applies and the first day must be excluded and the

last day included. In this case, the first day is the day that the tenancy ended, being June 30, 2008, which must be excluded, and the last day is the day that the application was filed, being June 30, 2010, which must be included in the 2 year rule under the *Residential Tenancy Act*. Therefore, the first day must be July 1, 2008 and the last day is June 30, 2008, and I find that the landlord has filed the application within the time prescribed by statute.

The landlord failed to establish that the blinds were beyond normal wear and tear. It may well be that the landlord has a policy for cleaning blinds if a tenant resides in a rental unit beyond one year, however the Act specifies that a tenant is required to leave a unit reasonably clean except for reasonable wear and tear.

I further find that the landlord has established a claim for unpaid rent and N.S.F. fees in the amount of \$400.00. 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 \$334.99 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$115.01. 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 application 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 23, 2010.

Dispute Resolution Officer