

DECISION

Dispute Codes DRI, MNSD, MND, MNR, FF

Introduction

There is an application by the Tenant to dispute an additional rent increase and a request for a monetary order for the return of the security deposit.

The Landlord has also filed an application for a monetary order for damage to the unit, site or property, for unpaid rent and to recover the cost of the filing fee.

Both parties attended the hearing by conference call and gave affirmed testimony.

Issue(s) to be Decided

Is the Tenant entitled to dispute an additional rent increase?

Is the Tenant entitled to a monetary order for the return of the security deposit?

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?

Background and Evidence

This matter was previously adjourned due to the Landlord not providing hard copies of photographs, but instead in the form of a compact disc format that he deemed crucial to his application. Both parties have not raised any objections to the adjournment and a new hearing date was set.

Both parties agree that they were served copies of each other's applications and evidence packages during the initial hearing date set. Neither party has disputed being properly served with the hearing and evidence documents.

According to both parties more than one tenancy has occurred between the two parties, but the current one started approximately in October to November of 2007. The Tenant D.M.N. has been the primary tenant in these tenancies with his brother D.N. part of the first two tenancies and ending the current tenancy with the current Co-Tenant, C.W. The original monthly rent on April 1, 2003 was \$1,200.00 with a security deposit of \$600.00 was paid at the time. There has been no proof offered of a signed tenancy agreement. The Landlord has made two rent increases since the Tenant, D.M.N. began

his original tenancy with increases in September 2005 of \$200.00 and in September 2007 of \$100.00. The Tenant states that the Landlord gave a rent increase notice in June/July of 2010 for a \$100.00 increase while removing the cable and internet from the agreed services to be provided by the Landlord. Both parties agreed that the current rent as of the end of the tenancy was \$1,500 per month payable on the 1st of each month. The Tenant states that he never signed or was given a copy of the tenancy agreement. The Tenant has never filed an application for dispute resolution regarding the previous two rent increases because he felt he had no choice because of low vacancy levels in the Kelowna area.

The Tenant is seeking the return of the original \$600.00 security deposit from April of 2003. The Landlord has stated that the Tenant forfeited the original security deposit at the end of the previous tenancy agreement due to carpet replacement costs caused by the Tenant D.N.'s pet. The Landlord has provided a photograph regarding damage to the lower portion of the kitchen wall where the wallpaper appears to show damage of being torn/chewed. The Landlord states that he waived the current tenancy requirement for a security/pet deposit as a token of good faith.

Both the Tenant and the Landlord have not provided any supporting evidence of confirmation of denial of the waiving of the security deposit.

The Landlord is seeking costs of an estimated \$200.00 for the replacement of portion of the lawn that was previously occupied by the Tenant's storage shed. The Landlord has not provided any evidence of any agreement in regards to the lawn repair. The Landlord states that he needs to install turf on the spot vacated by the shed, as well as remove the wood platform on which it was built on and left behind. The Landlord admits that there was no turf at that location when the shed was installed.

The Landlord is claiming approximately \$224.00 for carpet cleaning of 6 rooms, a hall and a 12 step stairwell. The invoice dated September 23, 2010 denotes a trade exchange credit of \$200.00 between the Landlord and Kelowna CleanPro, showing an outstanding amount of \$24.00 to cover the HST.

The Landlord is claiming unpaid rent for the month of September 2010 of \$1,500.00. The Tenant admits this and states that he withheld the September rent. The Landlord stated in his evidence that he served a 10 day notice to end the tenancy for unpaid rent after being informed by the Tenant that the September rent would not be paid. The Tenant has not disputed the notice.

Analysis

The Tenant's claim to dispute a rent increase in this case is I find unwarranted as the Tenant has chosen to not continue the tenancy based upon the Landlord's notice of the rent increase. The Tenant was served with a 10 day notice to end the tenancy for unpaid rent and remains undisputed to the date of this hearing. The Tenant is presumed to have accepted that the tenancy ended. The Tenant has admitted to withholding the September rent without an order from the RTA. I find that the Landlord has established a monetary claim for the unpaid September rent of \$1,500.00.

The Tenant's claim to dispute past rent increases is I find a matter that should have been dealt with when they occurred back in September 2005 and again in September 2007. The Tenant failed to file the application to dispute and has paid the rent at those rates to the end of the tenancy. The Tenant states that he did not have a choice because of the Kelowna area vacancy rates. The allowable rent increases as per the RTA in 2005 would have been 3.8% (increase amount \$45.60 and in 2007, a 4% increase amount \$49.82). The current allowable rent would have been \$1,295.42 if the Landlord followed the RTA guidelines for rent increases. Although the Landlord did not follow the rent increase guidelines as set out by the RTA, I find that because the Tenant failed to file for dispute resolution and paid the increases that he conclusively accepted them. I also note that the Tenant has only filed for dispute resolution for a monetary order concerning the return of the security deposit only. The Tenant's claim of \$11,080.00 is dismissed and any claim regarding the return of security deposit in dispute would be limited to the original \$600.00 amount.

The Landlord has failed to provide any evidence of a cost incurred for the removal of a wood platform and the installation of turf for \$200.00. The Landlord has stated that the area did not originally have turf and that the installation of the shed was consented to. No evidence of any agreement for the shed upon the end of the tenancy was submitted. I find that the Landlord has not established a claim for the installation of turf. I do however award to the Landlord, a monetary amount of \$20.00 for the removal of the wood platform equalling 1 hour of labour.

The Landlord is also claiming \$224.00 for costs incurred for the cleaning of carpets throughout the rental unit as shown above in evidence. The Landlord has not provided any evidence of carpet neglect requiring the use of a professional carpet cleaner. The Tenant disputes that the carpets were cleaned at the end of the tenancy. The Landlord has failed to provide a completed condition inspection report for both the move-in and

move-out. I find that the Landlord has failed to establish a claim regarding the carpet cleaning costs and as such dismiss this portion of the claim.

The Tenant has filed an application for the return of the \$600.00 security deposit. The Landlord claims that this security deposit was forfeited in the last tenancy agreement with the Tenant. The Tenant disputes that a waiver to forfeit the security deposit was given. The Landlord has submitted a copy of an unsigned tenancy agreement stipulating that the security and pet deposit were waived at the beginning of the current tenancy. As neither party has submitted any supporting evidence to confirm or deny the waiver of the security deposit, I find that the onus is the responsibility of the Landlord to prove the waiver. I find that the Landlord has failed and find that the Tenant has established a claim for the return of the security deposit. I award to the Tenant a monetary amount of \$621.24, the original security deposit and the included accrued interest of \$21.24 to the date of this judgement.

As both parties have been somewhat successful in their applications, I find that each party should bear the cost of the application. In the case of the Tenant, since the application fee was waived, no reimbursement is necessary.

The Landlord has established a claim for a total of \$1500.00 (unpaid rent) and \$20.00 (removal of wood platform) for a total claim of \$1,520.00.

The Tenant has established a claim for the return of the \$621.24 (security deposit and accrued interest).

I order that the Landlord retain the \$600.00 deposit and accrued interest of \$21.24 to the date of this judgment in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$898.76. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted a monetary order of \$898.76.

The Landlord may retain the security deposit.

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: January 19, 2011.

Residential Tenancy Branch