



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNDC, 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 the rental unit; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

The Agent for the Landlord stated that documents were submitted to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence however I did not have copies of the Landlord's evidence before me at the time of these proceedings. Documents submitted in evidence by the Landlord were discussed at the hearing. The Landlord was directed to re-submit these documents to the Residential Tenancy Branch and both parties were advised that the documents would be reviewed prior to a decision being made in this matter.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for loss of revenue; to compensation for damages to the rental unit; to retain all or part of the security deposit paid by the Tenant; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Agent for the Landlord stated that this tenancy began on January 01, 2008 and the Tenant stated that it began on December 17, 2007. The parties agree that the Landlord and the Tenant have a signed tenancy agreement which identifies the Tenant as the sole tenant; that other persons lived in the rental unit with the Tenant and paid a portion

of the rent to the Landlord; that the monthly rent during the latter portion of the tenancy was \$1,945.00; that the Tenant paid a security deposit of \$973.00 on December 17, 2007; and that the Tenant provided the Landlord with her forwarding address on March 03, 2011.

The Tenant stated that she moved out of the rental unit on February 17, 2011 and she believes the other occupants vacated the rental unit at the end of the month. The Agent for the Landlord stated that she believes the rental unit was vacated on February 28, 2011.

The Landlord and the Tenant agree that on February 17, 2011 or February 20, 2011 the Tenant gave the Landlord written notice to end the tenancy on March 01, 2011. The parties agree that the Tenant paid \$486.25 in rent for March due to the late notice provided. The Tenant stated that she expected the other occupants to pay rent for March, although she does not know if they paid their portion of the rent. The Agent for the Landlord stated that the other occupants did not pay rent for March.

The Landlord is seeking compensation for loss of revenue from March, in the amount of \$1,458.75. The Agent for the Landlord stated that the rental unit needed cleaning at the end of the tenancy and that property left in the rental unit had to be discarded, which prevented the Landlord from advertising the rental unit until March 10, 2011. The Agent for the Landlord stated that the Landlord was able to find a new tenant for April 01, 2011.

The Agent for the Landlord and the Tenant agree that the carpet in the rental unit was not cleaned at the end of the tenancy. The Tenant agreed that the Landlord is entitled to compensation for cleaning the carpet, in the amount of \$125.00.

The Landlord is seeking compensation, in the amount of \$220.00, for cleaning the rental unit. The Agent for the Landlord stated that the bathrooms, kitchen, windows, and blinds need cleaning in the rental unit. The Agent for the Landlord stated that the \$220.00 represents the wages paid to the Landlord's employees who cleaned the rental unit plus miscellaneous cleaning supplies. The Tenant stated that she did not view the rental unit after the other occupants vacated it at the end of February, so she does not know if it required cleaning.

The Landlord is seeking compensation, in the amount of \$150.00, for removing furniture left in the rental unit. The Agent for the Landlord stated that the Landlord paid a third party this amount to discard the furniture, although no receipt was submitted to corroborate that statement. The Tenant stated that she did not view the rental unit after the other occupants vacated it at the end of February, so she does not know if furniture was left in the rental unit.

The Landlord submitted a security deposit refund form which the Agent for the Landlord contends is written authorization to retain the security deposit. The form appears to have initially been completed with a word processor, at which time the form indicated

that the Tenant owed \$2,070.50 in rent; \$125.00 for cleaning the carpet; and \$40.00 for cleaning the drapes. The total deductions were not calculated when the form was initially created. The Tenant signed this form on March 03, 2011.

The security deposit refund form appears to have been manually amended to show that rent owing was \$1,584.25; that the Tenant also owes \$180.00 for cleaning; that the Tenant also owes \$150.00 for removing furniture; and that total deductions were \$2,079.25. The Tenant has not initialled any of these amendments. The Tenant contends that the aforementioned amendments were made after she signed the form on March 03, 2011. The Agent for the Landlord does not know when the amendments were made, as she was not present when the form was amended.

The security deposit refund form appears to have been manually amended to show that the Tenant is entitled to a refund. The amount of the refund is not legible, as this entry was subsequently crossed out. The Tenant contends that the form was amended on March 03, 2011 to show that she was entitled to a refund and she does not know when that entry was crossed out. The Tenant's signature appears beside this amendment. She stated that she signed the amendment to indicate that she was entitled to a refund. The Agent for the Landlord does not know when the amendments were made, as she was not present when the form was amended.

The Landlord submitted page 3 of a Condition Inspection Report which indicates the rental unit required cleaning and that furniture had been left in the unit. The Tenant signed the form to indicate that she authorized the Landlord to deduct \$495.00 from the Tenant's security deposit.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant entered into a tenancy agreement that required her to pay monthly rent of \$1,945.00 during the latter portion of this tenancy; that on February 17, 2011 or February 20, 2011 the Tenant gave written notice of her intent to vacate the rental unit on March 01, 2011; that the rental unit was occupied until February 28, 2011; and that the Landlord received rent of \$486.25 for March of 2011 from the Tenant.

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act (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.

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. I find that the late notice to vacate made it difficult for

the Landlord to find new tenants for the rental unit for March 01, 2011, as it prevented the Landlord from advertising the rental unit at the beginning of February.

While I accept that the rental unit needed some cleaning at the end of the tenancy, I cannot conclude that the need to clean prevented the Landlord from advertising the rental unit until March 10, 2011. Section 7(2) of the *Act* stipulates that a landlord who claims compensation for damage or loss must do whatever is reasonable to minimize the damage or loss. In my view, this rental unit could have been cleaned within a few days and could, therefore, have been advertised within the first few days of March. In reaching this conclusion I note that the Landlord submitted no photographic evidence to establish that the rental unit would have taken more than a few days to clean. In reaching this conclusion I was influenced by the fact that the Landlord has not claimed a large amount of compensation for cleaning, which causes me to conclude that a significant amount of cleaning was not required.

In my view the Landlord may have been able to find new tenants for March 15, 2011 if the Landlord cleaned the rental unit in a timely manner and advertised it during the first few days of March. I therefore grant the Landlord compensation for lost revenue for the period between March 01, 2011 and March 14, 2011, in the amount of \$972.50, and I dismiss the Landlord's claim for compensation for the remainder of March.

Section 38(4) of the *Act* stipulates that a landlord may retain an amount from a security deposit or a pet damage deposit if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain that amount to pay a liability or obligation. On the basis of the Condition Inspection Report that was signed on March 03, 2011, I find that the Tenant authorized the Landlord to retain \$495.00 from her security deposit. Information contained on that document indicates that the Landlord was retaining that amount in compensation for cleaning the rental unit, removing furniture, and repairing damage to the rental unit.

On the basis of evidence presented by the Landlord and in the absence of evidence to the contrary, I find that the rental unit required cleaning and that the Landlord paid \$220.00 to clean the rental unit and \$125.00 to clean the carpet. As the Tenant authorized the Landlord to retain \$495.00 from the security deposit for cleaning/damages, I find that the Landlord is entitled to retain that amount in full compensation for its claim for cleaning the rental unit and removing furniture from the unit, pursuant to section 38(4) of the *Act*.

In determining this matter, I placed no weight on the security deposit refund form. Although there is an entry on that form regarding deductions from the Tenant's security deposit, the Tenant contends that the form was amended after she signed it on March 03, 2011. As the amendments appear to have been made after the form was initially created and the Tenant did not sign the amendments to indicate that she agreed with the amendments, I find that the form is of little evidentiary value.

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

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,517.50, which is comprised of \$972.50 in lost revenue for the period between March 01, 2011 and March 14, 2011; \$495.00 that the Tenant previously authorized the Landlord to retain from the security deposit; and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I find that this monetary claim must be reduced by the \$486.25 that the Tenant paid the Landlord for rent for March, which reduces the claim to \$1,031.25. I hereby authorize the Landlord to retain the Tenant's security deposit of \$973.00 plus interest of \$15.21 in partial satisfaction of this monetary claim, leaving a balance owing of \$43.04.

Based on these determinations I grant the Landlord a monetary Order for the amount \$43.04. 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: June 29, 2011.

Residential Tenancy Branch