



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MND, MNR, MNSD, MNDC, FF
Tenant: MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with applications filed by the landlord and by the tenant. The landlord has applied for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant has applied for a monetary order for return of all or part of the pet damage deposit or security deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

Both parties attended the conference call hearing, provided affirmed testimony, and were given the opportunity to cross examine each other on their evidence. The tenant also called a witness who gave affirmed testimony and was subject to cross examination by the landlord. The parties also provided evidence in advance of the hearing however some of the evidence provided by the landlord was not received by the Residential Tenancy Branch or by the tenant within the time set out in the Rules of Procedure. The tenant did not consent to the late evidence being considered, and therefore, that evidence is not considered in this Decision. All other evidence and the testimony of the parties and the witness have been reviewed and are considered in this Decision.

Issue(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 an order permitting the landlord to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

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 tenant entitled to a monetary order for return of all or part of the pet damage deposit or security deposit?

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

Background and Evidence

The parties agree that this tenancy began on September 1, 2010. Rent in the amount of \$1,050.00 per month was payable in advance on the 1st day of each month. On August 19, 2010 the landlord collected a security deposit from the tenant in the amount of \$525.00, as well as a pet damage deposit in the amount of \$525.00 on August 31, 2010. The tenant moved from the rental unit in February, 2011, although the landlord testified that the tenant moved on or about February 15, 2011 and the tenant testified that it was on February 10, 2011. The tenant paid rent to the landlord in full for the months of February and March, 2011. A move-in condition inspection report was completed by the parties at the outset of the tenancy, and a move-out condition inspection report was completed by the landlord and the tenant's family members on February 15, 2011 because the tenant had been hospitalized.

The landlord testified that the parties had entered into a fixed term tenancy which was to expire on August 31, 2011. On January 18, 2011 the tenant left a letter in the landlord's mail slot saying that the tenant wanted to move at the end of February, 2011 and then the tenant subsequently told the landlord the same personally.

The landlord also testified that the relatives of the tenant called the landlord on February 13, 2011 to say that they had cleaned the unit, the tenant was in hospital, and that they would conduct the move-out condition inspection report with the landlord in place of the tenant.

The landlord also provided evidence that the unit was advertised for rent from January 23, 2011 to April 2, 2011, and the unit was re-rented commencing April 16, 2011.

The landlord also testified that the tenant did not clean the carpet at the end of the tenancy, and some light bulbs were either burned out or missing. The smoke alarm cover was also missing, and numerous nail holes were left in the walls in the living room. When questioned about the last time the unit had been painted, the landlord responded that it had been painted in December, 2009, but provided no evidence to support that testimony.

The landlord has also provided an invoice for the smoke alarm cover, batteries and light bulbs which are all on one invoice charged to the landlord by an employee of the landlord.

The landlord claims \$525.00 for half of April's rent, \$95.20 for carpet cleaning, \$54.00 for painting to cover marks left on the walls, \$4.00 for replacement of light bulbs, \$18.00 to replace the smoke alarm cover and batteries, and \$150.00 for advertising.

The tenant testified that the landlord had told the tenant at the outset of the tenancy that the tenancy was not for a fixed term, and the tenancy agreement stated: "Rate and term to be set by landlord after talk to tenant."

The tenant further testified that the rental unit was very dirty when the tenant moved in. The tenant had the carpets cleaned professionally about 3 weeks after moving in, but provided no evidence to support that testimony. The tenant also stated that the floors were very dirty and had hair and dirt stuck to them requiring the tenant to use a steamer to get them clean.

The tenant also testified that the relatives were authorized by the tenant to conduct the move-out condition inspection, and page 1 of the document shows that the tenant would receive back \$903.80 of the security deposit and pet damage deposit, and the relatives agreed to that, but the landlords didn't return any.

The tenant also testified that the landlord ran an advertisement for all 17 units within the rental complex and wanted to use this rental unit as a caretaker's suite because the main shut-off for the water was inside that unit. The caretaker had also told the tenant that the unit had been vacant for close to 2 years prior to the commencement of this tenancy.

The tenant also testified that the landlord cashed a post-dated cheque for the month of March, 2011 without the consent of the tenant.

The tenant claims the return of the security deposit, return of the pet damage deposit, and to recover the rent for the month of March, 2011.

The tenant's witness testified that she was present during the initial walk-through of the rental unit. The witness stated that the tenant told the landlord at that time that the tenant wanted a month-to-month tenancy, not a fixed term. The witness also testified

that the rental unit was not clean, and the tenant agreed to rent the unit in spite of its condition.

Analysis

I have examined the tenancy agreement, and although there are numerous cross-outs and obliterations throughout the document, the tenant's evidence is correct that it states: "Rate and term to be set by landlord after talk to tenant." I also note that the landlord and the tenant have initialled beside the paragraphs in the tenancy agreement that refer to a fixed term, and therefore, I find that the tenant acknowledged a fixed term tenancy.

With respect to the landlord's claim for damages, the onus is on the landlord to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenant's breach of the *Act* or the tenancy agreement;
3. The amount of such damage or loss;
4. What efforts the landlord took to reduce, or mitigate such damage or loss.

I have reviewed the move-in and move-out condition inspection reports and note that the one completed at move-in was completed on a pre-printed form that identifies items in each room. The move-out condition inspection report is not on a pre-printed form, but on plain paper in someone's handwriting and is far more detailed than the move-in condition inspection report. The move-in condition inspection report shows "Nails in front of stove" beside "walls and trim" in the kitchen. It also shows that there were marks on the walls in the bathroom and a mark by the television outlet and that the unit was in need of cleaning at the beginning of the tenancy, and I am not satisfied that the walls were in need of painting any more at the end of the tenancy than at the beginning of the tenancy. Therefore, I find that the landlord has not established that the tenant ought to be responsible for painting the rental unit.

The move-in condition inspection report supports the tenant's testimony and the witness' testimony that the rental unit was in need of cleaning prior to the commencement of this tenancy. The *Residential Tenancy Act* states that a tenant is required to leave a rental unit reasonably clean and undamaged except for normal wear and tear. A tenant is not required to have carpets professionally cleaned at the end of the tenancy, but is required to clean carpets at reasonable intervals during the tenancy. The tenant testified that the carpets were cleaned by the tenant about 3 weeks after the tenant moved into the rental unit, which is not disputed by the landlord. The landlord

has not claimed cleaning costs, other than carpet cleaning, and due to the evidence before me, I find that the tenant cannot be held to carpet cleaning at the end of the tenancy; the rental unit clearly required cleaning before the tenancy began. The *Residential Tenancy Act* also states that a landlord is to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and makes it suitable for occupation by a tenant, which applies whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

With respect to the landlord's claim to replace 4 light bulbs and the battery and cover plate for the smoke alarm, I accept the evidence of the landlord, however I have reviewed the invoice provided by the employee of the landlord and question why it would take 1 ½ hours to replace those items, and I find that ½ hour would be plenty, and I award \$6.00 for the service and \$4.00 for the bulbs.

Having found that the tenant had entered into a fixed term tenancy, I find that the tenant ended the tenancy earlier than permitted by the agreement. I have also reviewed the evidence of advertising costs and find that the landlord commenced advertising the unit for rent on January 23, 2011 and therefore, I find that the landlord has attempted to mitigate any loss of revenue, and the landlord's claim for \$150.00 for advertising is justified. I also must find that the tenant is not entitled to return of the rent for the month of March, 2011, and the landlord is entitled to the claim of \$525.00 for ½ of a month of rent for April, 2011.

I also note that the move-out condition inspection report shows that the tenant provided a forwarding address in writing. The evidence before me is that the report was completed on February 15, 2011 and the landlord applied for dispute resolution on March 2, 2011 claiming against the security deposit which is exactly 15 days later. Therefore, the tenant is not entitled to double recovery of the security deposit or pet damage deposit.

In summary, I find that the tenant has paid \$1,050.00 in deposits to the landlord. The landlord is entitled to unpaid rent and damages in the amount of \$10.00 for light bulbs and smoke detector cover; \$150.00 for advertising; \$525.00 for ½ a month of rent, for a total of \$685.00. The tenant is entitled to recovery of the balance in the amount of \$365.00. Since both parties have been partially successful with the applications, I decline to order that either party recover the filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$365.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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: July 11, 2011.

Residential Tenancy Branch