Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for compensation for damage and unpaid rent; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of his 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 Landlord submitted two packages of evidence to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted duplicates packages of the same documents to the Residential Tenancy Branch. A copy of one of those packages was served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for additional rent/fees; whether the Landlord is entitled to compensation for damage to the yard of the residential premises; whether the Landlord should be entitled to retain any part of the security deposit paid by the Tenant; and whether either party is entitled to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that the Landlord and the Tenant entered into a fixed term tenancy agreement that ended on August 31, 2010; that they entered into a

new fixed term tenancy agreement that ran from August 01, 2010 until January 31, 2011; that the tenancy agreement reverted to a month-to-month tenancy at the end of the fixed term; that the tenancy agreement entitled the Tenant to the exclusive use of one bedroom and to the shared use of a variety of common areas in the residential complex; that he paid a security deposit of $300.00 in 2010; that he paid a pet damage deposit of $250.00 in the latter part of 2010 or the early part of 2011; and that his most recent fixed term tenancy agreement required him to pay monthly rent of $600.00 on the first day of each month**.**

The Landlord and the Tenant agree that the Tenant advised the Landlord that he wanted his girlfriend to move into his room with him and to share common areas in the rental unit. The parties agree that they discussed increasing the rent to $700.00 once the Tenant's girlfriend moved in.

The Landlord and the Tenant agree that the Tenant's girlfriend did move into the rental unit on December 01, 2010, at which time the Tenant began paying the increased rent of $700.00. Shortly after the girlfriend moved into the rental unit the Landlord advised the Tenant that he has reconsidered his original offer of $700.00 and he thought $850.00 would be more appropriate. The parties agree that the Tenant did not agree to pay monthly rent of $850.00.

The Landlord is seeking compensation, in the amount of $600.00, which represents additional rent that the Landlord believed should have been paid for the time the Tenant's girlfriend resided in the rental unit.

The Tenant stated that he vacated the rental unit on March 05, 2011. The Landlord stated that the Tenant vacated the rental unit on either March 05, 2011 or March 06, 2011.

The Landlord and the Tenant agree that the Tenant advised the Landlord that he could keep $100.00 from his security deposit for the five days that he remained in the rental unit in March of 2011. The Landlord stated that he did not agree to the $100.00 payment and he believes that the Tenant should pay a weekly rate of $212.00, which is based on his belief that the monthly rent was $850.00.

The Tenant stated that he provided the Landlord with his forwarding address, via email, on March 13, 2011. He submitted a copy of that email however he acknowledged that the Landlord did not respond to the email. The Landlord stated that he did not see this email until he was served with evidence for these proceedings.

The Landlord stated that the Tenant personally handed him his forwarding address in writing on March 22, 2011. The Tenant is not certain of the exact date he personally provided the Landlord with his forwarding address, but he believes it may have been March 22, 2011.

The Landlord is seeking compensation, in the amount of $750.00, for cleaning pet feces from the yard of the rental unit and for repairing damage caused to the yard by the feces. The Landlord submitted several photographs to show that dog feces was left in various areas of the yard. The Landlord contends that he will have to replace the soil in the vegetable garden as a result of feces being left in that area. The Landlord submitted no evidence to corroborate his claim that the feces damaged the yard/garden or that it will cost $750.00 to remove the feces or to repair the damage to the yard.

The Tenant agreed that he did not pick up all of the feces from the yard. He stated that he has since viewed the yard of the residential complex and it appears to be in reasonable condition.

The Landlord and the Tenant agree that the Tenant and/or his girlfriend parked their vehicles in a parking space on the residential property; that the tenancy agreement did not specify that parking was included with the tenancy; and that the Landlord never advised the Tenant that they could not use the parking area. The Tenant contends that the Landlord verbally advised him he could use the parking area. The Landlord denies giving the Tenant authorization to use the parking area.

The Landlord is seeking compensation, in the amount of $200.00, for using the parking area.

The Landlord and the Tenant agree that the Tenant and/or his girlfriend stored personal property in the garage and in a storage area underneath the kitchen; that the tenancy agreement did not specify that storage was included with the tenancy; and that the Landlord never advised the Tenant that they could not use the storage areas. The Tenant contends that the Landlord verbally advised him he could use the storage areas. The Landlord denies giving the Tenant authorization to use the storage areas.

The Landlord is seeking compensation, in the amount of $400.00, for using the storage areas.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Landlord and the Tenant had a written fixed term tenancy agreement for the period between August 01, 2010 and January 31, 2011, which reverted to a month-to-month tenancy at the end of the fixed term, for which the Tenant was required to pay monthly rent of $600.00 on the first day of each month.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant voluntarily began paying monthly rent of $700.00 when his girlfriend moved into his rental unit with him.

Section 13(2)(f)(iv) of the *Act* stipulates that a tenancy agreement must set out the amount of rent that is payable and, if the rent varies with the number of occupants, the amount by which it varies. As the tenancy agreement does not stipulate that the rent will vary if an additional person moves into the rental unit, I cannot conclude that the Tenant was obligated to pay additional rent when his girlfriend moved into the rental unit.

Section 43(1)(a) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations, which for 2010 was 3.2%. I find, therefore, that the Landlord did not have the right to impose a rent increase of more than $19.20 in 2010.

Section 43(1)(b) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount order by the director on an application under section 43(3) of the *Act*. I have no evidence to show that the Landlord applied to increase the rent pursuant to section 43(3) of the *Act*. I therefore cannot conclude that the Landlord had the right to increase the rent in any amount pursuant to section 43(1)(b) of the *Act.*

Section 43(1)(c) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that is agreed to in writing by the Tenant. I have no evidence to show that the Tenant agreed, in writing, to pay monthly rent of $850.00 when his girlfriend moved into the rental unit.

I find that the Landlord has failed to establish that he is entitled to monthly rent of $850.00 during any portion of this tenancy. I find that the Tenant paid the rent that the tenancy agreement required him to pay for December of 2010, January of 2011, and February of 2011, and that no rent is currently owed for those months. For all of the aforementioned reasons, I dismiss the Landlord's application for unpaid rent from December of 2010, January of 2011, and February of 2011.

I find that the Tenant remained in possession of the rental unit until March 05, 2011. In reaching this conclusion I was heavily influenced by the testimony of the Tenant who clearly stated that he vacated the rental unit on that date and the testimony of the Landlord, who was uncertain of the precise date it was vacated but who believed it could have been March 05, 2011.

I find that the Landlord is entitled to compensation for the five days the Tenant over held this rental unit. I find that the per diem rate for this rental unit was $19.35, which is based on the $600.00 monthly rent that the Tenant was required to pay. On this basis, I find that the Tenant must pay the Landlord $96.75 in rent for the period between March 01, 2011 and March 05, 2011.

In the absence of evidence that shows the Landlord actually received the email that the Tenant sent to him on March 13, 2011, I find that I cannot conclude that the Landlord received that email. In reaching this conclusion I was heavily influenced y the

Landlord's testimony that he did not receive this particular email prior to being served with evidence for this hearing.

I find that the Landlord did receive the Tenant's forwarding address on March 22, 2011. In reaching this conclusion I was heavily influenced by the testimony of the Landlord who clearly stated that he received it on that date and the testimony of the Tenant, who was uncertain of the date he gave it to the Landlord in person but who believed it could have been March 22, 2011.

The evidence shows that the Landlord filed an Application for Dispute Resolution seeking to retain the security deposit on April 05, 2011, which is in compliance with the timelines established by section 38 of the *Act.*

When making a claim for damages under a tenancy agreement or the *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 37(2)(a) of the *Act* when he failed to remove all of the dog feces from the residential property. In addition to establishing that the Tenant failed to comply with the *Act*, the Landlord must also establish that the failure to comply with the *Act* resulted in damage or loss.

I find that the Landlord failed to establish that the dog feces damaged the residential property. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's belief that the soil in the garden needs to be replaced because it was contaminated by feces, given that many people allow animals to defecate in yards and animal manure is commonly used to fertilize gardens.

I do, however, accept that the yard was not left in reasonably clean condition. In these circumstances, I find that the Landlord failed to establish the cost of removing the feces. In reaching this conclusion, I was strongly influenced by the absence of any evidence to show that he did remove the feces or that he paid to have the feces removed. On this basis, I dismiss the Landlord's claim for compensation for removing the feces.

Section 62(3) of the *Act* authorizes me to make an Order that requires a tenant to comply with any term in the tenancy agreement. As the tenancy agreement did not require this Tenant to pay parking or storage fees to the Landlord, I find that I do not have the authority to require the Tenant to pay for parking on the residential property or for storing property on the premises.

Section 62(3) of the *Act* also authorizes me to make an Order that requires a tenant to comply with the *Act* or the *Residential Tenancy Regulation*. As the *Act* or the *Residential Tenancy Regulation* do not require tenants to pay parking or storage fees

that are not specified in the tenancy agreement, I find that I do not have the authority to require the Tenant to pay for parking or storing property on the residential property.

Section 67 of the *Act* authorizes me to order a tenant to pay compensation to a landlord if the landlord suffers a loss as a result of the tenant failing to comply with the *Act*, the *Residential Tenancy Regulation*, or the tenancy agreement. The Landlord introduced no evidence to show that the Tenant contravened the *Act,* the *Residential Tenancy Regulation*, or any term of this tenancy agreement when he or his girlfriend parked on residential property or when they stored property on the premises. I cannot conclude therefore, that the Landlord is entitled to compensation pursuant to section 67 of the *Act*. In reaching this conclusion I was heavily influenced by the fact that the Landlord never specifically advised the Tenant he was not allowed to use the parking or storage areas. On this basis, I dismiss the Landlord's compensation for parking/storage fees.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of $96.75, in rent for March of 2011**.** Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain this amount from the Tenant's security deposit.

I find that the Tenant is entitled to the remainder of his security deposit and pet damage deposit, in the amount of $453.25.

Based on these determinations I grant the Tenant a monetary Order for the amount $453.25. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I find that the Application for Dispute Resolution filed by each party both have some merit. I therefore decline to award either party compensation for filing an Application for Dispute Resolution.

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 18, 2011.

Residential Tenancy Branch