



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord seeking to keep all or part of the tenant's security deposit, a monetary order for money owed or compensation for damage or loss due and for unpaid rent and to recover the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and to respond each to the other, and make submissions to me.

Only the evidence timely submitted and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation pursuant to sections 38, 67 and 72 of the Residential Tenancy Act (the "Act")?

Background and Evidence

This 10 month, fixed term tenancy began on September 1, 2010, was to end on June 30, 2011, actually ended on April 30, 2011, when the tenant vacated the rental unit, monthly rent was \$850.00 and the tenant paid a security deposit of \$425.00 on September 1, 2010.

The landlord's relevant evidence included a copy of the tenancy agreement, email correspondence between the parties, which included the tenant's notice dated March 30, 2011, to the landlord of her vacating the rental unit by April 30, 2011, and two post dated rent cheques from the tenant to the landlord for May and June 2011, which were returned due to the tenant's stop payment on the cheques. I note that the landlord advised he had deposited the cheques despite knowing the tenant had vacated the rental unit.

The landlord's monetary claim is in the amount of \$2,095.00, which is for \$1,700.00 for unpaid rent for May and June, 2011, \$10.00 service charges from his bank for the returned cheques, \$200.00 for cleaning the rental unit, \$75.00 for power washing the carport, \$60.00 for travel costs to the Residential Tenancy Branch and the filing fee of \$50.00.

In support of his application, the landlord stated that he is owed \$1,700.00 for loss of rent due to the tenant breaking the lease prior to the end of the fixed term. Upon query, the landlord acknowledged that he received the tenant's March 30, 2011, notice to vacate by April 30, 2011, and when further queried as to whether he took any steps to re-rent the rental unit once receiving the tenant's notice, he stated "absolutely not."

The landlord contended that his distance away from the rental unit prevented him from being able to re-rent the rental unit.

The landlord stated that the tenant did clean the rental unit after vacating, but as the rental unit was a bed and breakfast during the summer months, a more thorough cleaning was necessary.

The landlord stated that the tenant's car leaked oil and required a power washing to clean the stains.

The landlord submitted that he is entitled to travel costs and for his time as he had to drive two times to a branch office in conjunction with filing his application.

Upon query, the landlord confirmed that there was no move in or move out condition inspection report.

In response, the tenant stated that she provided a thorough cleaning of the rental unit and left the landlord notes about her cleaning. The tenant also submitted that she left the rental unit cleaner than when she moved in as she had to clean the oven prior to being able to using it.

The tenant stated that she had her car fixed and after leaving a piece of cardboard underneath, she did not see any new oil leaks. The tenant submitted that the oil stains appeared to be quite old and was there when she moved in.

The tenant stated that she believed the landlord never advertised the rental unit and it never showed as available on his website.

The tenant submitted that due to the landlord's bank losing her April rent cheque, she incurred a \$10.00 fee for providing another payment.

Upon query, the tenant admitted not providing a written forwarding address to the landlord after the tenancy ended.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In monetary claims, awards for compensation for damage or loss are provided under sections 7 and 67 of the Residential Tenancy Act. A successful applicant, the landlord in this case, cannot simply allege a violation of the Act, regulations or tenancy agreement by the other party, but rather, the applicant must establish all of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation of the other party has caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

As to the landlord's claim for lost or unpaid rent for May and June, 2011, with the landlord confirming that he had taken no steps to advertise the rental unit for May or June, I find the landlord failed to mitigate or minimize his claimed loss by advertising and marketing of the rental unit or any other methods to avoid a loss of rent. Therefore I **dismiss** his claim for **\$1,700.00** for the May and June rent.

Section 23(3) of the Residential Tenancy Act requires a landlord to offer a tenant at least 2 opportunities to complete a condition inspection at the start of the tenancy and Section 35, among other things, requires a landlord to offer a tenant at least 2 opportunities at the end of the tenancy to complete a move-out condition inspection.

Section 24 and 36 of the Act extinguishes the right of the landlord to claim against the deposit for damages should the landlord fail to offer the opportunities for inspection.

In the absence of a condition inspection report or photographs depicting the alleged unclean state and the need for power washing the carport, I find there to be insufficient evidence to meet the burden of proof establishing that the tenants damaged or left the rental unit in an unclean state. A condition inspection could easily reveal such condition of the rental unit.

I therefore **dismiss** the landlord's application for a rental unit cleaning of \$200.00 and power washing for \$75.00.

In relation to the landlord's claim for travel costs, I find that the landlord has chosen to incur costs that cannot be assumed by the tenant. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act and not for costs incurred to file an application against the respondent. Therefore, I find that the landlord may not claim travel fees, as they are costs which are not named by the *Residential Tenancy Act*.

I therefore dismiss the landlord's claim for \$60.00.

Due to the above, I **dismiss** the landlord's application, **without leave to reapply**.

As the landlord's application is dismissed, I do not find he is entitled to recovery of the filing fee.

Under authority of Section 67 of the Act, I **direct** the landlord return the tenant's security deposit in the amount of \$425.00 forthwith and I grant the tenant a monetary **Order** in the amount of **\$425.00**.

I have not ordered the landlord to pay the tenant double her security deposit as the tenant has not previously provided her forwarding address to the landlord. However, the landlord is cautioned that the provisions of section 38 (6) (b) of the Act now become applicable as he was provided the tenant's forwarding address during the hearing and on the front page of this Decision.

I am enclosing a monetary order for \$425.00 with the tenant's Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) should the landlord fail to comply with this monetary order.

Conclusion

The landlord's application is dismissed without leave to reapply.

The tenant is granted a monetary order in the amount of \$425.00.

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: October 19, 2011.

Residential Tenancy Branch