



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This matter dealt with an application by the Landlord for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Is the Landlord entitled to compensation and if so, how much?

Background and Evidence

This fixed term tenancy started on June 15, 2011 and was to expire on June 30, 2012 however it ended on October 31, 2011 when the Tenant moved out. Rent was \$1,825.00 per month. The Tenant paid a security deposit of \$925.00 and a pet deposit of \$925.00 at the beginning of the tenancy. The Landlord returned \$1,485.38 of the security deposit and pet deposit to the Tenant on November 10, 2011 (with her hearing package).

The Landlord said the Tenant gave her written notice she would be ending the tenancy at the end of October 2011 so she sent the Tenant an e-mail on October 11, 2011 advising her that a move out condition inspection report would have to be completed. The Tenant denied that she received this e-mail. The Landlord said the Tenant did not contact her to make arrangements so she assumed that the Tenant would attend the rental unit on October 31, 2011 at noon for this purpose. The Landlord said the Tenant was not at the rental unit at noon on October 31, 2011 so she a Notice of Final Opportunity to Schedule a Condition Inspection Report taped to the fireplace mantle together with a note asking the Tenant to contact her to arrange a move out inspection for later that day. The Landlord said she returned to the rental unit at 7:00 p.m. but the Tenant was still not there, however some of her belongings still were there. The Landlord said her note and Notice were still attached to the fireplace mantle. The Landlord said she made a number of attempts to call the Tenant but she was unable to leave a message. The Tenant claimed the Landlord never left a note and Notice as she alleged.

The Landlord said the Tenant did not contact her so she went to the rental unit the following day at 1:00 p.m. and discovered that all of the Tenants belongings had been removed and the rental unit cleaned. The Landlord said the Tenant did not leave the keys to the rental unit behind. The Landlord said she waited two more days to hear from the Tenant about the keys and when she did not, she had the locks on the rental unit changed. The Tenant said on November 1, 2011 she left the keys to the rental unit in a sealed envelope in a mail box on the rental property. The Tenant claimed it was the Landlord's and tenants' of the rental property practice to leave messages for the Landlord in this mail box. The Landlord denied this and said all communication is made with tenants by telephone and tenants only leave items in the unlocked, communal mailbox when instructed by her to do so. The Landlord said the Tenant did not advise her that she had put the keys in the mailbox until November 6, 2011.

The Landlord said the Tenant put a stop payment on her rent cheque for October 2011 and as a result, she incurred bank fees of \$65.00. The Tenant claimed that when she contacted the Landlord's financial institution, she was advised that no bank fees were charged to an account holder for a stop payment. The Tenant argued that the bank receipt for this amount provided by the Landlord indicated that it was for an NSF fee and not for a stop payment fee.

Analysis

Section 37(2)(b) of the Act says that "when a tenant vacates a rental unit, the tenant must give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property."

I find that the Landlord is entitled to recover her expenses for changing the locks on the rental unit. A Tenant is required at the end of a tenancy to return all keys to a Landlord. Although the Tenant left the keys to the rental unit in a mailbox on November 1, 2011, I find that she did not advise the Landlord that she had done so. I also find that it was not reasonable for the Landlord to assume that the Tenant would have left the keys in the mailbox given that it was an unlocked receptacle that was accessible to other tenants and guests on the rental property. Consequently, I find that the Landlord is entitled to her expenses of \$155.78 for changing the locks.

Section 37(1) of the Act says that "unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends." Section 57(3) of the Act says that "a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended." The Tenant admitted that she did not vacate the rental unit until approximately 9:00 p.m. on October 31, 2011 and did not return the keys to the rental unit until November 1, 2011. Consequently, I find that the Landlord is entitled to compensation equal to one day's rent in the amount of \$60.83.

Section 7(1)(c) of the Regulations to the Act says that “a Landlord may charge a service fee charged by a financial institution to the landlord for the return of a tenant’s cheque.” The Landlord claimed that she incurred bank charges of \$65.00 because the Tenant put a stop payment on her October 2011 rent cheque. for her returned cheque according to information she received from the Landlord’s financial institution.

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that she incurred bank fees of \$65.00 because the Tenant’s cheque was returned. This means that if the Landlord’s evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. The Tenant argued that she was advised by the Landlord’s financial institution that there was no charge for a cheque returned for a stop payment and this is corroborated by one of the Landlord’s documents which also states that no bank fee was charged due to the Tenant’s cheque being returned. The same bank document also states that “any applicable service charge will show as a separate entry on your account.” The Landlord did not provide a copy of her bank statement but instead provided a hand-written receipt purportedly issued by her financial institution which alleges that a payment of \$65.00 was made by the Landlord in payment of “NSF fees” for the Tenant’s returned cheque. The Tenant argued that the Landlord did not incur “NSF fees” and therefore argued that this amount likely related to other items that may not have cleared the Landlord’s account due to her stopped payment.

Given the contradictory evidence of the Parties on this issue and in the absence of any reliable, corroborating evidence from the Landlord (such as a bank statement), I find that there is insufficient evidence to conclude that the Landlord incurred bank fees of \$65.00 due to the Tenant’s returned cheque and this claim is dismissed without leave to reapply. As the Landlord has been largely successful in this matter, I find that she is entitled to recover from the Tenant the \$50.00 filing fee she paid for this proceeding. Consequently, I find that the Landlord has made out a total monetary claim for \$266.61 and that she currently holds \$339.62 of the Tenant’s security deposit. Consequently, ***I Order the Landlord to keep \$266.61 of the Tenant’s security deposit and to return the balance of \$73.01 to the Tenant forthwith.***

Conclusion

A Monetary Order in the amount of \$73.01 has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: November 30, 2011.

Residential Tenancy Branch