



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for an order for monetary compensation for damage to the rental unit, to keep all or part of the security deposit, and to recover the filing fee for the Application.

The landlord and tenant appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to respond each to the other party, and make submissions to me.

Preliminary Issue:

The landlord testified that he submitted documentary evidence, including photographs of the rental unit to the Residential Tenancy Branch, which I had not received as of the day of the hearing. A search of the records did not confirm the landlord's testimony; however the tenant acknowledged that he had received this evidence.

As a result of the tenant's confirmation I allowed the landlord to submit his evidence after the hearing. I received and considered all of the landlord's evidence for the purpose of this Decision.

Issue(s) to be Decided

Has the landlord established an entitlement to a monetary order pursuant to sections 38, 67, and 72 of the under the Residential Tenancy Act (the "Act")?

Background and Evidence

This fixed term tenancy began on January 15, 2011, was to end on August 31, 2011, actually ended on June 30, 2011 when the tenant vacated the rental unit, monthly rent was \$1,000.00 and the tenant paid a security deposit of \$500.00 at the beginning of the tenancy.

The landlord's monetary claim is \$2,395.50, which includes lost rent revenue for July and August 2011, in the amount of \$2,000.00 (\$1,000.00 per month), cleaning for \$264.00, damage to carpet for \$81.50 and the filing fee of \$50.00.

In support of his application, the landlord stated that the tenant left the rental unit dirty and in need of cleaning. The landlord submitted that he based his claim for cleaning due to an estimate he received from a cleaning company. The landlord submitted that his photos proved the necessity of cleaning as well as the carpet damage, which was a percentage of the carpet cost.

The landlord testified that upon the tenant informing him that he was vacating the rental unit 2 months prior to the end of the fixed term, he advertised the rental unit immediately, with no success.

As a result, the landlord is claiming lost revenue for the two remaining months of the fixed term.

Upon query the landlord acknowledged that he did not submit proof of his advertisements for the rental unit.

Upon query the landlord stated that there had been a move-in inspection and a resulting condition inspection report; however, the landlord stated that there was not a move-out inspection as the tenant did not leave his forwarding address until July 18, 2011.

I note the landlord did not submit a copy of the move-in condition inspection report.

In response, the tenant stated that he cleaned the rental unit at move out and denied that he owed the landlord any amount.

The tenant stated that the photos were inconclusive and did not know when they were taken.

Analysis

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

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

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

I find the uncontradicted testimony and evidence supports that the tenant breached Section 45 (2) of the Residential Tenancy Act which deals with a tenant's notice to end a fixed term tenancy. I find it reasonable that the landlord incurred a loss of revenue for July 2011, due to the tenant's insufficient notice and find that the landlord has established a **monetary claim** in the amount of **\$1,000.00** for loss of rent for the month of July 2011.

As to further lost revenue for the month of August, I find the landlord failed to submit proof that he advertised the rental unit or that he took steps to mitigate his loss by reducing the monthly rent requested.

In the absence of proof by the landlord of advertisements, I find that the landlord submitted insufficient evidence to prove step 4 in the test for damage and loss. With the lack of evidence, I cannot determine that the landlord made reasonable attempts to minimize his loss.

In the absence of a move in or move out condition inspection report, I find the landlord has not sufficiently proven the condition of the rental unit before the tenancy began and after it ended and he is thereby unable to meet steps 1 and 2 of his burden of proof. Therefore I **dismiss** the landlord's claim for cleaning and carpet cleaning.

I find the landlord's claim to contain merit and as such, I award the landlord recovery of the filing fee, in the amount of \$50.00.

Conclusion

I find the landlord has established a monetary claim in the amount of \$1,050.00, comprised of lost rent revenue of \$1,000.00 for July 2011 and recovery of the filing fee for \$50.00.

I **order** that the landlord retain the security deposit of \$500.00 in partial satisfaction of the claim and I **grant** the landlord a monetary order pursuant to section 67 of the Act for the balance due of **\$550.00**.

I am enclosing a monetary order for \$550.00 with the landlord'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 tenant fail to comply with this monetary order.

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 12, 2011.

Residential Tenancy Branch