



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent, to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Does the Tenant owe money for rent or was the rent prepaid in full?
2. Was the Tenant required to pay for professional cleaning of the rental unit in accordance with his tenancy agreement?
3. Has the Landlord met the requirements of the Act to be able to retain the security deposit?

Background and Evidence

The following facts are not in dispute:

- The parties entered into a fixed term tenancy agreement that began on July 13, 2011 and ended September 1, 2011 at which time the Tenant was required to vacate the rental unit; and
- On July 13, 2011, the Tenant paid \$750.00 as the security deposit and \$2250.00 as rent; and
- The notation written on the tenancy agreement "owes \$150xx for 3 days rent Aug 28th – Sept 1st, 2011" was written by the Landlord for the purpose of evidence and was not written on the Tenant's copy of the tenancy agreement at the outset of the tenancy; and
- No condition inspection report form was completed at the beginning or at the end of this tenancy.

The Landlord affirmed that the tenancy agreement was for a furnished suite at \$1,500.00 per month and because the Tenant moved in on July 13, 2011 he owes for three days rent at \$150.00 per day. He also advised that #17 of the tenancy agreement provides that the premises will be professionally cleaned at the expense of the Tenant and will be billed against the Tenant's security deposit with the price to be determined.

The Tenant affirmed that he told the Landlord he would be paying his rent and security deposit in full in one payment and that the Landlord accepted his payment as the full rent and a daily rate was not determined at the time they entered into the contract so he does not owe three days rent as claimed by the Landlord. He knew nothing about these additional days of rent until he requested the return of his security deposit. He stated he provided his forwarding address to the Landlord on September 15, 2011 and requested the return of his security deposit.

The Tenant argued that he had cleaned the rental unit at the end of his tenancy. He disagrees with the term in the tenancy agreement because it does not list an amount of how much would be charged for cleaning and he feels \$200.00 is too much to charge. When he contacted the Landlord about the end of his tenancy he said the Landlord told him to leave the keys inside and leave, there was no meeting or walk through scheduled.

In closing the Landlord referred to his documentary evidence which included a photocopy of his calendar on September 6, 2011 which is where the Tenant wrote his forwarding address and is proof it was received September 6th and not September 5th, as stated by the Tenant. As for the rent, they did discuss the Tenant paying in advance as the Tenant wanted a discount so the rent was reduced from \$1,600.00 to \$1,500.00 per month. The Landlord told the Tenant rent was charged per month and it was for a fixed term. The Landlord is of the opinion that because rent is charged at \$1,500.00 per month the Tenant should have to pay the additional three days as he moved in prior to the 15th of the month and owes a daily rate of \$150.00 for the additional three days. The Landlord claims the rental unit was left in a very dirty state. They own numerous furnished suites and he uses the same cleaners to clean all of the units when tenants move out.

The Tenant confirmed they discussed a discount in rent and it was the Landlord who said he would drop the rent to \$1,500.00 per month but it had to be paid in full up front to get that price. He paid the full amount up front therefore he should not have to pay any additional rent. The Tenant acknowledged writing the forwarding address on the Landlord's calendar so it would have been September 6th then.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

Section 20 (e) of the Act provides that a landlord must not require or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit at the end of the tenancy agreement.

As per the aforementioned I find #17 of the tenancy agreement to be a breach of section 20 (e) of the Act, as it is a term that allows the Landlord to automatically keep or bill to the security deposit for professional cleaning and does not provide the Tenant the opportunity to hire their own professional cleaners.

Sections 23 and 35 of the Act stipulate that a landlord must conduct a move in and move out inspection and complete a condition inspection report form in the presence of the tenant and in accordance with the *Residential Tenancy Regulation*.

Sections 24 and 36 of the Act provide that if a landlord fails to complete a move in and move out condition inspection report form then the right of a landlord to claim against the security deposit for damage to the residential property is extinguished.

Part 3 section 21 of the *Residential Tenancy Regulation* stipulates that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Landlord has the burden to prove the condition of the rental unit at the beginning and the end of the tenancy. Accordingly, the only evidence before me was verbal testimony and an invoice from a cleaning company who was scheduled to clean the rental unit regardless of the condition of the unit. I find the disputed verbal testimony insufficient to meet the burden of proof and I further find the cleaning invoice, which

states “very dirty”, to be insufficient as evidence to prove what the actual condition of the unit was at the end of the tenancy.

As per all the aforementioned reasons, I find there to be insufficient evidence to prove the Landlord is entitled to retain a portion of the Tenant’s security deposit. Accordingly I dismiss his claim to retain the Tenant’s security deposit.

With respect to the Landlord’s claim for unpaid rent, I favor the evidence of the Tenant, who stated they had negotiated the full rent for the entire term of the lease and paid it in advance, as supported by the evidence that 1 1/2 month’s rent plus the security deposit were paid on the first day of the tenancy and that he knew nothing of the Landlords claim for additional rent until he requested the return of his security deposit. I favor the Tenant’s evidence over the evidence of the Landlord who stated that rent was to be paid monthly at \$1,500.00 per month and because the Tenant moved in two days before the middle of the month he owes two days rent at the end of the term. I favored the evidence of the Tenant over the Landlord, in part, because the Tenant’s evidence was forthright and credible. The Tenant readily acknowledged that he negotiated a reduced rent and offered to pay the full rent in advance, which was supported by the Landlord’s testimony.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find the Landlord’s explanation of why he was seeking the additional three days rent now after the tenancy ended to be improbable. Given that the Landlord had negotiated the reduction in rent if rent was paid in full it is reasonable to conclude the Landlord was seeking these costs only after the Tenant was looking for the return of his security deposit and he was aware of his legal entitlement to make a claim to retain the deposit. I find that the Landlord’s explanation that he simply is entitled to the additional three days of rent based on rent being charged monthly to be improbable. Rather, I find the Tenant’s explanation that the parties had entered into an agreement for reduced rent providing the rent was paid in full at the start of the tenancy, to be plausible given the circumstances presented to me during the hearing.

For all the aforementioned reasons, I find there to be insufficient evidence to prove rent remains unpaid for the term of this tenancy. Accordingly I dismiss the Landlord's claim for unpaid rent.

The Landlord has not been successful with his application; therefore the Landlord must bear the burden of the cost of his application.

Having dismissed the Landlord's application, he has no legal entitlement to retain the Tenant's security deposit and is hereby ordered to return the deposit of **\$750.00** plus interest of \$0.00 forthwith.

Conclusion

The Tenant's decision will be accompanied by a Monetary Order in the amount of **\$750.00**. This Order is legally binding and must be served upon the Landlord.

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: December 12, 2011.

Residential Tenancy Branch