



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened in response to an application filed by the landlord seeking a monetary order for unpaid rent and cleaning costs in the sum of \$4,887.60 as well as recovery of the fee paid for this application.

Both parties appeared at the hearing and gave evidence under oath.

Issue(s) to be Decided

Has the landlord met the burden of proving his claims?

Background and Evidence

This tenancy began in November 1, 2008 at which time the tenant paid a security deposit of \$1,075.00. The tenancy went through several fixed terms. The tenant wrote to the landlord in July 2010 to advise that he had found some faults with the rental unit and he wished to vacate the rental unit at the end of August 2010 although the fixed term ran until October 31, 2010. The landlord says that although the tenant claims he had reason to vacate the tenant never complained of any problems with the rental unit prior to giving notice. Further, the landlord says the tenant wrote to him asking for an extension to the contract after the October 2011 fixed term ended. The landlord says this shows that the tenant and his family were happy living in the rental unit. The landlord says the tenant paid rent up to the end of August 2010 and then vacated without paying rent to the end of the fixed term (October 2010). The landlord says he was unable to secure a new tenant. The landlord now seeks the loss of rent he has suffered. The landlord says the rent at the end of the tenancy was \$2,193.00 and that the landlord expended \$201.60 for carpet cleaning and \$300.00 for general cleaning at the end of this tenancy. The landlord therefore claims \$4,886.00 plus recovery of the filing fee. The landlord says he still holds the security deposit of \$1,075.00

The tenant says the rent was actually \$2,250.00 due to an illegal rent increase that the landlord imposed during the tenancy. The tenant submitted 2 cancelled cheques, one payable in the sum of \$2,250.00 and one in the sum of \$2,193.00 to demonstrate that the rent was \$2,250.00.

In a letter send to the landlord on July 26, 2010 the tenant states he wishes to vacate the rental unit early because the renal unit is not safe "...we noticed a stranger at the back of the house in the wee hours morning" and because

The washrooms has no exhaust fans and during winter, mold seeps in and we have to regularly clean the ceiling including the window seals that fails to stop water from coming inside. My daughter has developed Ashma as a result of this.

(reproduced as written)

The tenant agrees that they did not clean the carpets.

The tenant states further that the landlord did not return his security deposit within the property time frame and he therefore made application for double the deposit which was awarded to him in file No. 776757 on October 5, 2011 in the sum of \$2,202.78. The landlord attempted to have the decision reviewed but was denied.

Analysis

The landlord says the tenant vacated before the end of a fixed term tenancy. The landlord says the tenant has never complained of any problems with the rental unit previously. I find that the tenant has failed to provide sufficient evidence to convince me that the rental unit was dangerous and that it caused his daughter's asthma or that there were health and safety issues such that the tenancy had to end prior to the end of its fixed term. I therefore find that the tenant vacated 2 months prior to the end of the fixed term in violation of the tenancy agreement.

However, a landlord, making a claim for loss of revenue has the duty to mitigate his damages. I find that the landlord has supplied insufficient evidence in this regard. I will therefore award rent only for the month of September 2010. The tenant says the rent is \$2,250.00 and the landlord says it is \$2,193.00 and that is what the landlord has claimed. I will therefore award \$2,193.00.

I will also allow the landlord's claim for the cleaning costs of \$500.00 as claimed because the tenant has admitted that they did not clean the carpets and I accept the landlord's evidence that the rental unit was not cleaned generally.

As the landlord has been successful in this claim I will allow him to recover the filing fee he paid for this application. The landlord's monetary award is as follows:

September 2010 rent	\$2,193.00
Filing Fee	50.00
Total	\$2,743.00

The tenant submits that he holds a monetary award in his favour in the sum of \$2,202.78 made October 5, 2011 which the landlord has not paid. While I am unable to offset one Order against another, the parties are at liberty to do.

Conclusion

The landlord is provided with a formal copy of an order for the total monetary award as set out above. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial Court of British Columbia.

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: January 25, 2012.

Residential Tenancy Branch