



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MND, MNDS, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted no evidence in regards to this matter.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for unpaid rent/loss of revenue; to compensation for a late fee; for compensation for damage to the rental unit; to retain all or part of the security deposit paid by the Tenant; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on June 01, 2009; that the agreement required the Tenant to pay of \$710.00 by the first day of each month; and that the Tenant paid a security deposit of \$355.00.

The Landlord and the Tenant agree that a condition inspection report was completed at the beginning and the end of this tenancy, a copy of which was submitted in evidence.

The Landlord and the Tenant agree that on August 11, 2011 or August 12, 2011 the Tenant gave the Landlord written notice of his intent to vacate the rental unit; that the written notice did not declare when the Tenant would vacate the rental unit; that the

Tenant verbally advised the Agent for the Landlord that he would be vacating at the end of August; and that the Tenant vacated the rental unit on September 11, 2011.

The Landlord and the Tenant agree that the Tenant gave the Landlord written permission to retain his security deposit in his letter dated August 11, 2011.

The Agent for the Landlord stated that the Tenant did not pay rent in August; that the Tenant had a credit of \$179.89 on August 01, 2011, which was applied to rent owing for August; and that the Tenant paid no rent for September of 2011.

The Tenant stated that his rent was paid by the provincial government directly to the Landlord prior to August 01, 2011. He submitted no evidence to corroborate this statement.

The Agent for the Landlord stated that the last payment the Landlord received from the provincial government for this tenancy was for July of 2011. The Landlord submitted a resident ledger that corroborates this statement.

The Landlord is seeking compensation, in the amount of \$20.00, as the Tenant did not pay rent when it was due on August 01, 2011. In the tenancy agreement, which was submitted in evidence, the Tenant agreed to pay a fee of \$25.00 whenever he is late paying rent.

The Landlord is seeking compensation, in the amount of \$1,000.00 to replace the carpet. The Agent for the Landlord acknowledged that the carpet in the living room was stained and had at least one cigarette burn at the start of the tenancy. She stated that there were additional stains on the carpet at the end of the tenancy; that the carpet was very dirty at the end of the tenancy; and that it needed to be replaced.

The Tenant agreed that the carpet was dirty and needed cleaning at the end of the tenancy but he stated it was otherwise in the same condition at the end of the tenancy as it was at the start of the tenancy.

The Landlord is seeking compensation, in the amount of \$315.00 to clean the rental unit. In a letter, dated October 13, 2011, the Tenant authorized the Landlord to retain this amount from security deposit for cleaning in the unit.

The Landlord is seeking compensation, in the amount of \$224.00, for painting and repairing a wall. The Agent for the Landlord stated there were holes in the wall at the end of the tenancy. The Tenant stated that there were some chips in the wall which were caused by the door hitting the wall.

The Landlord submitted a condition inspection report that was completed at the end of the tenancy and was signed by the Tenant. There is nothing on the report that indicates

the carpet was in need of replacement or walls needed repair at the end of the tenancy, although the report clearly indicates cleaning was required throughout the unit.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant entered into a tenancy agreement that required him to pay monthly rent of \$710.00 by the first day of each month.

In regards to the rent payment for August of 2011, I favor the evidence of the Landlord over the evidence of the Tenant, and I find that rent was not paid for August of 2011; that the Tenant had a \$179.89 credit on file on August 01, 2011, which was applied to his rent for August of 2011, and that he still owes \$530.11 in rent that was due on August 01, 2011.

In determining that rent had not been paid for August of 2011 I was influenced by the testimony of the Agent for the Landlord and the rent ledger that was submitted in evidence by the Landlord, which corroborates that testimony. In determining that rent had not been paid for August of 2011 I was further influenced by the absence of any evidence that corroborates the Tenant's statement that his rent for August was paid to the Landlord by the Provincial Government.

Section 45 of the *Act* stipulates that a tenant may end a periodic tenancy by providing the landlord with written notice to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due.

On the basis of the undisputed evidence presented at the hearing, I find that on August 11, 2011 or August 12, 2011 the Tenant provided the Landlord with written notice of his intent to vacate the rental unit. To be in compliance with section 45 of the *Act*, written notice that is served on August 11, 2011 or August 12, 2011 can end this tenancy no earlier than September 30, 2011. As the notice to end tenancy that the Tenant served to the Landlord in August did not end the tenancy prior to September 01, 2011, I find that the Tenant was required to pay all of the rent that was due on September 01, 2011.

Section 26 of the *Act* stipulates that a tenant must pay rent when rent is due. I therefore find that the Tenant must pay \$1,240.11 in rent for August and September of 2011.

As I have found that the Tenant did not pay his rent when it was due on August 01, 2011 and the tenancy agreement requires the Tenant to pay a fee of \$20.00 whenever rent is not paid when it is due, I find that the Landlord is entitled to a late fee of \$20.00 for the month of August of 2011. The Landlord did not apply for a late fee for September.

I find that the Landlord submitted insufficient evidence to show that the carpet in the unit was damaged during this tenancy. In reaching this conclusion I was heavily influenced

by the absence of documentary evidence, such as photographs or an entry on the condition inspection report that was completed at the end of the tenancy, that corroborates the Agent for the Landlord's testimony that the carpet had been damaged during the tenancy or that refutes the Tenant's testimony that the carpet required cleaning but was otherwise unchanged since the start of the tenancy. As the Landlord failed to establish that the carpet in the unit was damaged during this tenancy, I dismiss the Landlord's claim to replace the carpet.

As the Tenant has authorized the Landlord to retain \$315.00 from his security deposit for cleaning the rental unit, in writing, I find there is no need to consider the Landlord's application to retain this amount for cleaning.

I find that the Landlord submitted insufficient evidence to show that the walls in the unit were damaged, with the exception of reasonable wear and tear, during this tenancy. In reaching this conclusion I was heavily influenced by the absence of documentary evidence, such as photographs or an entry on the condition inspection report that was completed at the end of the tenancy, which corroborates the Agent for the Landlord's testimony that there were holes in the walls. Although the Tenant acknowledges there were some "chips" on the wall I find that I am unable to determine whether this damage exceeds "reasonable wear and tear". In the absence of a photograph that allows me to assess the nature of the damage and in the absence of an entry on the condition inspection report outlining the nature of the damage to the wall, I am simply unable to determine that the damage exceed "reasonable wear and tear". As a Tenant is not obligated to repair damages arising from "reasonable wear and tear", I dismiss the Landlord's claim to repair the wall.

I find that the Landlord's application has some merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,310.11, which is comprised of \$1,240.11 in unpaid rent, a late fee of \$20.00, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I authorize the Landlord to keep the unused portion of the Tenant's security deposit, which is \$40.00, in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$1,270.11. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court 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: January 10, 2012.

Residential Tenancy Branch