



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the Landlord: MNSD, MNDC, MND, FF
For the Tenant: MNSD, FF

Introduction

This hearing dealt with Cross Applications for Dispute Resolution under the Residential Tenancy Act (the "Act").

The landlord applied for a monetary order for money owed or compensation for damage or loss and for damage to the rental unit, for authority to retain the tenant's security deposit and to recover the filing fee for the Application.

The tenant applied for a monetary order for a return of his security deposit, doubled, and for recovery of the filing fee.

The parties and their witnesses appeared, the hearing process was explained and the parties were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and respond each to the other and make submissions to me.

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.

Issue(s) to be Decided

Is the landlord entitled to a monetary order pursuant to sections 38, 67 and 72 of the Act?

Is the tenant entitled to a monetary order pursuant to sections 38, 67 and 72 of the Act?

Background and Evidence

I heard testimony that this one year, fixed term tenancy started on July 1, 2010, set to end on June 30, 2011, and continued thereafter on a month to month basis until it ended on October 31, 2011. Monthly rent was \$1,500.00 and the tenant paid a security deposit of \$500.00 on July 1, 2010.

Landlord's Application

The landlord's monetary claim is as follows:

Estimated cost to repair damage	\$700.00
Estimated cost to replace windows	\$941.75
Early move in prior to tenancy start	\$550.00
Stolen goods	\$900.00
Faucet theft	\$33.59
3 replacement locks	\$33.59
3 more replacement locks	\$33.59
Refrigerator repairs	\$78.40
Ferry trip	\$13.45
Filing fee	\$50.00
TOTAL	\$3,334.37

The landlord's relevant evidence included copies of photographs of the rental unit, a tenancy agreement, a condition inspection report listing information concerning the move-in, a quotation for repair of damage, an estimate for window replacement, a note to an RCMP officer, dated July 22, 2010, stating that the tenant cut the locks to the storage area and listing missing items and values, receipts for replacement locks and faucet, a receipt for a refrigerator repair, dated July 22, 2010, and a ferry fare receipt.

In support of her application, the landlord stated that the tenant attended the final inspection, but, in addition to swearing at and harassing the landlord, the tenant refused to sign the document. The landlord also stated that the tenant would not cooperate in inspecting the rooms.

After the date of the final inspection, the landlord had her contractor inspect the rental unit, which led to the discovery of some damages by the tenant. Upon query, the landlord admitted that she has not made the repairs as of the day of the hearing.

As to the broken windows, the landlord submitted that it was her belief that the tenant smashed the windows as the result of receiving an unfavourable decision from the Residential Tenancy Branch.

Upon query, the landlord stated that she did have the windows replaced since the submission of her evidence, but did not submit the receipt for the same.

During the tenancy, according to the landlord, the tenant consistently cut the locks to her storage unit, which caused the landlord to suffer theft of her items as well as replacement of the lock costs. The landlord submitted that the tenant did not have access to the storage unit, although I note this restriction was not included in the tenancy agreement.

The landlord stated that she reported the theft to the RCMP, but acknowledged that the tenant was the first person to call the police.

The landlord, upon query, stated that the RCMP officer asked her if she, the landlord, witnessed the tenant taking the reported items, to which the response was "no."

As to her claim for pro-rated rent for an early move in by the tenant, the landlord stated that the tenant moved in 11 days early without permission.

The landlord submitted that the tenant's carelessness caused the landlord to incur an unnecessary refrigerator repair costs.

The landlord stated that due to the tenant's rent cheque being dishonoured, she was compelled to incur an unnecessary ferry expense to attend to the payment.

The landlord's witness, the contractor performing the inspection after the end of the tenancy, stated that he observed some damage, such as nicks, bumps and scrapes. Upon query, the witness stated that he did not see the rental unit prior to the commencement of the tenancy and would not be able to state if the tenant committed any of the alleged damages.

In response, the tenant denied any committing any damage to the rental unit and stated he attended the rental unit on the day of the final inspection and signed the condition inspection report, as shown by the evidence. The tenant stated that there were no damages and the rental unit was clean, which is why he signed the report with no remarks being made.

The tenant also denied that he refused to cooperate in the inspection as the landlord refused to go from room to room, and further denied that he harassed the landlord.

The tenant stated that he hired a cleaner to clean the rental unit and that it was cleaner at the end of the tenancy than when he moved in. The tenant submitted that he took pictures of the rental unit on the day of the inspection, as he wanted his own proof of the cleanliness of the rental unit. The tenant submitted copies of the photos.

As to the broken windows, the tenant submitted that there was a lot of vandalism in the area of the rental unit and that it was vandals who smashed the windows and took the landlord's property, even though the landlord, according to the tenant, left objects of little or no value in the crawl space. The tenant stated he was the person contacting the RCMP to report the vandalism, early in the tenancy.

The tenant stated that he was forced to cut the locks to the storage unit, which he characterized as his crawl space, as the landlord consistently changed the locks. The tenant stated the crawl space was part of the rental unit and was where he kept a large portion of his belongings and that the landlord attempted to deny him access to that portion of the rental unit to retrieve his belongings.

The tenant further submitted that the landlord was away for long periods of time, so she was not available to address the lock change.

As to an early move in, the tenant stated that the landlord had agents representing her at the beginning of the tenancy, and that the agents gave him, the tenant, permission to move in early, stating that the rental unit was empty and that he could move in early.

The tenant submitted a letter from this agents, which I note confirmed that the landlord provided them keys to be given to the tenant, which included keys to the rental unit, the mailbox and the crawl space, as the crawl space was a part of the rental unit for the tenant's storage.

The landlord acknowledged that she is away for long periods of time, due to her occupation.

The tenant denied causing the problem with the refrigerator and that he was responsible for its repair.

The tenant's witness stated he attended the final inspection with the tenant, at which time the landlord stated that there were damages and that the tenant should write them down. The witness stated that the landlord refused to write any damages on the condition inspection report and that she would not give the tenant a copy of the report.

Tenant's Application:

The tenant stated that the landlord was provided with his written forwarding address in a letter dated and delivered on September 27, 2011. The landlord did not deny receiving the letter. The tenant provided a copy of the letter.

The letter also contained a request for a return of the tenant's security deposit.

The tenant submitted that the landlord has not returned any portion of the tenant's security deposit.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the claiming party 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. In this case, the onus is on both parties to prove damage or loss.

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

Landlord's Application:

Sections 23 and 35 of the Act require the landlord and tenant to inspect the condition of the rental unit at the start and end of the tenancy and state that the landlord must complete a condition inspection report in accordance with the Act and regulations. This requirement is not discretionary. [Emphasis added]

Sections 24 and 36 of the Act state that the rights of a landlord to claim against the security deposit for damages is extinguished if the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Residential Tenancy Branch Regulation # 17 states that, among other things, a condition inspection report must contain the move-in inspection date, the move out date, the move out inspection date, signatures of the parties and a statement of the condition of the rental unit.

In reviewing the Condition Inspection Report submitted by the landlord, I find the condition inspection report to be deficient for purposes of compliance with the Act and Regulations as the landlord failed to provide a move-out inspection date, and listed a move out date of July 1, 2011, the date of the end of the fixed term, instead of the actual move-out date of October 31, 2011. Further, the Landlord did not list the condition of the rental unit at the end of the tenancy, nor did she sign it, although the tenant signed the document. Based on the landlord's failure to comply with the Act, I therefore find that the landlord's right to claim against the tenant's security deposit for damages has been extinguished for failure to properly complete the condition inspection report.

As I have found the landlord lost her right to claim against the tenant's security deposit for the damages listed in her application, I **dismiss** that portion of the landlord's application for alleged damages, for window replacement, for locks being cut and replaced, theft and a refrigerator repair, **without leave to reapply**.

Even had I not dismissed the landlord's application for damages due to non-compliance with the Act and Regulations regarding condition inspection reports, I would in the alternative have made the determination that the landlord's application would be dismissed due to lack of proof by the landlord that the tenant damaged the rental unit.

The condition inspection report shows no such damages upon move-out, and the landlord did not submit proof that the tenant committed any alleged theft. Rather, I find the weight of the evidence supports the tenant's position that he reported the theft to the police and that the area was a subject of vandalism.

I also find that the landlord failed to substantiate that the tenant was not entitled to access to the storage crawl space. Rather I accept the tenant's evidence and testimony that an agent representing the landlord in her absence confirmed that the tenant was provided access to the crawl space for his storage and that she allowed the tenant to move in early.

I therefore **dismiss** that portion of the landlord's application seeking pro-rated rent for an early move-in, **without leave to reapply**.

I also find that the landlord failed to substantiate that the tenant was responsible for repair to the refrigerator.

As to the landlord's claim for a ferry fare, I find that the landlord failed to substantiate that she was required to travel to attend to a cheque being returned. I therefore **dismiss** her claim for reimbursement of ferry travel, **without leave to reapply**.

As I have dismissed the landlord's application, I decline to award her the filing fee.

Tenant's Application:

As I have dismissed the landlord's application, I find the tenant is entitled to a return of his security deposit.

Residential Tenancy Branch Policy Guideline 17 states that, if the tenant has not specifically waived a doubling of the security deposit, "The arbitrator ***will*** order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act." [Emphasis added]

As I have found the landlord's right to claim against the tenant's security deposit was extinguished, I grant the tenant's application and find the tenant has established a **monetary claim** in the amount of **\$1,050.00**, comprised of his security deposit of \$500.00, doubled, and the filing fee of \$50.00, which I have awarded him per section 72 of the Act.

Conclusion

The landlord's application is dismissed without leave to reapply.

I grant the Tenant's application and have issued a monetary Order for the sum of **\$1,050.00**.

I am enclosing a monetary order for **\$1,050.00** with the tenant's Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement should the landlord 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: February 09, 2012.

Residential Tenancy Branch

