



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPB, MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for an order of possession for cause and for breach on an agreement with the landlord, for a monetary order for damage to the rental unit and money owed or compensation for damage or loss, for authority to retain the tenant's security deposit and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, 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.

Preliminary Issue:

The landlord's application contained a request for an order of possession; however, the landlord filed her application seven months after the end of the tenancy. The landlord could not provide any explanation as to why she filed for an order of possession. As a result, I have excluded from consideration the landlord's request for an order of possession.

Issue(s) to be Decided

Is the landlord entitled to a monetary order under sections 38, 67 and 72 of the *Residential Tenancy Act* (the "Act")?

Background and Evidence

I heard undisputed testimony that this six month, fixed term tenancy began on July 12, 2010, continued thereafter on a month to month basis at the end of the fixed term, until it ended on May 15, 2011. Monthly rent was \$2,100.00 and the tenant paid a security deposit of \$1,050.00 at the beginning of the tenancy on or about July 12, 2010.

The landlord's monetary claim is in the amount of \$9,813.29, which is comprised of \$1,650.00 for painting, \$4,000.00 for laminate flooring, caulking and repair of damage

for \$930.00, tracks and sliders for \$200.00, HST cost of \$813.60, broken blinds for \$104.16, shower head for \$55.99, toilet seat for \$23.00, sink strainer for \$5.02, P.O Box rental for \$117.60, dispute resolution filing fee for \$100.00, advertisement for \$213.92, realtor relocation fee for \$700.00, 20 hours of labour for \$400.00 and loss of rental income for \$500.00.

The landlord's relevant evidence included the tenancy agreement, email transmissions between the landlord and tenant, microscopic copied, photographic depictions of the rental unit after the subsequent tenant moved into the rental unit, sent from her mobile phone, a receipt from a construction company, a receipt for blind repair, a receipt for a shower head, and some photographs of the rental unit, taken at an undetermined time.

In support of her application, the landlord submitted that her tenant (AHB) prior to this tenant arranged the tenancy through connections to each other. As a result, the tenant and his family moved into the rental unit within 2 hours of AHB moving out. According to the landlord, AHB left his furniture and possessions for the use and benefit of the tenant. The landlord stated that she expected AHB to have the rental unit clean and in good condition for the tenant and his family.

The landlord submitted that the tenant was given one day to look through the rental unit and report any deficiencies.

The landlord stated that the tenant left the rental unit in a filthy state and in need of repair, which required the landlord to hire a contractor to attend to the damages.

The landlord submitted that the damage to the carpet required a floor replacement, to laminate, and the rental unit needed painting after the tenant moved out.

The landlord submitted that the tenant allowed mould to grow in the rental unit.

The landlord submitted that due to the state of the rental unit at the end of the tenancy, she suffered a loss of a partial month's rent. As well, the landlord felt compelled to hire a realtor to assist in finding a new tenant.

When asked, the landlord confirmed that there was no move-in or move-out condition inspection report. As well the landlord confirmed that there was no other inspection with the tenant. When asked why there was no inspection, the landlord stated that she "left it with honour and trust."

When I asked the landlord how she could prove the state of the rental unit at the start of the tenancy, the tenant replied that she could through her eyes.

When asked, the landlord stated that she was unclear as to the age of the painting in the rental unit, and confirmed that the carpet was probably installed in the rental unit in 1998. The landlord submitted that she did not want to have more carpet in the rental unit, which is why she installed laminate flooring after the tenancy ended.

In response, the tenant denied having any connections to ABH and stated that since the tenancy was to be short term, he decided to buy ABH's furniture and possessions. The tenant submitted that rental unit was extremely filthy when he moved in and the landlord refused to have the rental unit cleaned and in liveable condition at the start of the tenancy. The tenant stated that the rental unit additionally was saturated with mould when he moved in, and that the landlord expected the tenant and his family to provide the cleaning. The tenant said that the rental unit was so filthy, there was feces left in the open.

The tenant stated that he and his family spent the entire time of the tenancy cleaning the rental unit and left it substantially cleaner than when they moved in.

The tenant submitted that as the subsequent tenant was to pay more in rent, the landlord agreed with her request to put laminate flooring into the rental unit. The tenant questioned the landlord's motive, suggesting that the landlord wanted to renovate the rental unit, which was in poor condition, at the tenant's expense.

The tenant's relevant evidence included a computer flash drive depicting the state of the rental unit.

Analysis

Based on the above, the testimony and evidence, and on 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 the landlord 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.

A key component in establishing a claim for damage is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Residential Tenancy Act deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me the landlord has failed to meet her obligation under of the Act of completing the inspections resulting in extinguishment of the landlord's right to the tenants' security deposit. There is also no independent record of the condition of the rental unit at the

start and end of the tenancy. Even had the landlord conducted an inspection as obligated, the rental unit was required to be empty when inspected, which it was not.

The landlord has presented evidence of work performed on the rental unit; however, I find the tenant's submissions that the landlord wanted to renovate the rental unit for the subsequent tenant at the expense of the tenant to be both compelling and persuasive. I do not accept that the tenant could have committed such damage as alleged by the landlord in such a short time.

In the absence of any other evidence, such as the condition inspection reports or photographs prior to and after the tenancy, I do not accept the landlord's claim for damages to the rental unit. The landlord has the burden of proof on the balance of probabilities and I find the landlord's evidence, or rather lack of compelling evidence, does not meet the burden of proof.

I therefore **dismiss without leave to reapply** the landlord's claim for damages and associated costs, including \$1,650.00 for painting, \$4,000.00 for laminate flooring, caulking and repair of damage for \$930.00, tracks and sliders for \$200.00, HST cost of \$813.60, broken blinds for \$104.16, shower head for \$55.99, toilet seat for \$23.00, sink strainer for \$5.02, 20 hours of labour for \$400.00 and loss of rental income for \$500.00.

In relation to the landlord's claim for PO Box rental, realtor fees and advertisement, I find that the landlord has chosen to incur costs that cannot be assumed by the tenant. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act and not for costs incurred for choices made by the landlord. Therefore, I find that I do not have authority under the Act to grant these costs to the landlord.

I therefore **dismiss without leave to reapply** the landlord's claim for a P.O Box rental for \$117.60, advertisement for \$213.92, and realtor relocation fee for \$700.00.

Due to the above, I **dismiss** the landlord's application, **without leave to reapply**.

As the landlord's application is dismissed, I do not find she is entitled to recovery of the filing fee.

Under authority of Section 67 of the Act, I **direct** the landlord to return the tenant's security deposit in the amount of \$1,050.00 forthwith and I grant the tenant a monetary **order** in the amount of **\$1,050.00**.

I have not ordered the landlord to pay the tenant double his security deposit as the tenant was not able to clearly establish that he provided the landlord with his written forwarding address until shortly before the landlord filed her application. However, the landlord is cautioned that the provisions of section 38 (6) (b) of the Act now become applicable as she now has been provided the tenant's forwarding address.

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.

Conclusion

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

The tenant is granted a monetary order in the amount of \$1,050.00.

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 23, 2012.

Residential Tenancy Branch