



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent and utilities, for compensation for cleaning and repair expenses, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts. The Landlord also applied for an Order of Possession however the Parties agree that the tenancy has already ended and therefore this part of the Landlord's application is dismissed without leave to reapply.

Issue(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Are there utility arrears and if so, how much?
3. Is the Landlord entitled to compensation for cleaning and repair expenses?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on December 27, 2010 and ended on March 30, 2012 when the Tenant moved out. Rent was \$900.00 per month. The Tenant paid a security deposit of \$450.00 at the beginning of the tenancy.

The Parties completed a condition inspection report at the beginning of the tenancy but did not complete one at the end of the tenancy. The Landlord said he arranged with the Tenant to do an inspection on March 30, 2012 but she had to cancel it because she was sick and he was unable to contact her (other than by text messaging) after that time to set up another appointment.

The Landlord said that the Tenant was supposed to deposit rent funds to his bank account each month and did so up until May 2011 but made no payments thereafter. The Tenant claimed that she made rent payments each month but could not locate her bank deposit receipts. The Landlord said he had his financial institution do a thorough search but they could not locate any deposits made by the Tenant after May 2011. The Landlord did not provide any bank documents in support of this assertion.

The Landlord also said the Tenant has utility arrears of \$343.50. The Landlord admitted that the utility account was in the Tenant's name but argued that if the amount remains unpaid by December 31, 2012, it will be transferred to his property tax account. The Tenant said it is her intention to pay this account.

The Landlord said the carpets in the rental unit were professionally cleaned at the beginning of the tenancy but that the Tenant did not clean them at the end of the tenancy. The Landlord said he cleaned the carpets at the end of the tenancy and he sought compensation equal to the amount he paid to have them professionally cleaned at the beginning of the tenancy.

The Landlord said the Tenant did not leave the rental unit reasonably clean at the end of the tenancy. In particular, the Landlord said there were crayon and ink marks on various doors and walls that could not be removed and had to be repainted. The Landlord said many walls had to be washed, all kitchen appliances and cupboards cleaned as well as the bathroom. The Tenant admitted that she was unable to do much cleaning at the end of the tenancy because she was ill. The Landlord said he also had to repair a toilet to remove a small plastic bottle that had plugged the drain. The Landlord said he later discovered damage to a new screen door. The Tenant admitted that one of her children had dropped a bottle in the toilet.

Analysis

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that there are rent arrears as alleged. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. The Landlord claimed that his financial institution did a search of his account but found no rent payments for the period, June 2011 to March 2012. However, the Landlord provided no evidence in support of this assertion. The Tenant claimed that she did make the payments but provided no evidence in support of that assertion. In the circumstances, I find that there is insufficient evidence to conclude that rent is unpaid for the period alleged and the Landlord is granted leave to reapply for this relief provided only that he submits sufficient, corroborating (or reliable documentary) evidence of it.

I also find that the Landlord's application to recover unpaid utilities is premature. The Landlord is not now liable nor may he ever be liable for unpaid utilities in the Tenant's name. Consequently, this part of the Landlord's claim is also dismissed with leave to reapply.

Section 35 of the Act requires a Landlord to complete a condition inspection report at the end of a tenancy even if a Tenant does not participate in the move out inspection. Section 36 of the Act says that if a Landlord fails to complete a condition inspection

report as required by s. 35 of the Act, then the Landlord's right to make a claim against the security deposit for damages to the rental unit is extinguished.

The Landlord did not complete a move out inspection report or take any photographs of the rental unit at the end of the tenancy however, the Tenant did not dispute the condition of the rental unit as alleged by the Landlord. Consequently, I award the Landlord general cleaning expenses of \$280.00, carpet cleaning expenses of \$265.50 and repair expenses of \$65.00 for a total of \$610.50. The Landlord provided no evidence of a damaged screen door and therefore that part of his claim is dismissed without leave to reapply. As the Landlord has had limited success in this matter, (ie. having made out a claim for less than 10% of that sought), I find that he is entitled to recover from the Tenant 25% of the filing fee for this proceeding or \$25.00 for a total monetary award of \$635.50.

In failing to complete the condition inspection report when the Tenant moved out, I find the Landlord contravened s. 35(3) of the Act. Consequently, s. 36(2)(c) of the Act says that the Landlord's right to claim against the security deposit for damages to the rental unit is extinguished. I find however, that sections 38(4), 62 and 72 of the Act when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlord to keep the Tenants' security deposit of \$450.00 in partial satisfaction of the monetary award. The Landlord will receive a Monetary Order for the balance owing of \$185.50.

Conclusion

The Landlord's application for an Order of Possession is dismissed without leave to reapply. The Landlord's application for unpaid rent and utilities is dismissed with leave to reapply. A Monetary Order in the amount of **\$185.50** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: April 10, 2012.

Residential Tenancy Branch