



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, O, FF
 MNDC, MNSD, OLC, FF

Introduction

This hearing dealt with cross applications by the landlord and tenant. The application by the landlord is for a monetary order for unpaid rent, to keep all or part of the security deposit, money owed or compensation due to damage or loss, other and recovery of the filing fee. The application by the tenant is for money owed or compensation due to damage or loss, return of the security deposit, for the landlord to comply with the Act and recovery of the filing fee.

Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

Background and Evidence

This fixed term tenancy began March 1, 2012 with monthly rent of \$1150.00 and the tenant paid a security deposit of \$575.00.

On March 2, 2012 the tenant notified the landlord by email that as the rental unit was dirty, there is evidence of mice in the rental unit and there is white powder on the floor which the tenant believes is a health hazard and therefore the tenancy agreement is void.

On March 5, 2012 the tenant notified the landlord by email that she has removed all of her possessions from the rental unit due to the sub-standard conditions in the rental unit but will retain possession of the rental unit until the security deposit is returned.

The landlord testified that on February 29, 2012 he and the tenant conducted a move in inspection and the items noted on the move in report as 'need cleaning', were areas in the rental unit that the tenant wanted cleaned. The landlord stated that on March 1,

2012 he and his wife purchased cleaning supplies and spent 7 hours cleaning in the rental unit.

The landlord and tenant communicated back and forth extensively by email and copies of these emails have been submitted into evidence.

The tenant testified that when she saw the dirty condition of the rental unit and discovered what she believed to be rat poison on the floor, she felt her health and safety were at risk. The tenant then on the morning of March 2, 2012 sent the landlord an email with a list of numerous items not cleaned such as the blinds and patio door tracks, the fridge leaking and what she believes is rat poison on the floor. In this email the tenant advises the landlord that mice are a major health problem and this combined with the other issues 'voids' the lease. The tenant in this email also requests return of the security deposit, the March 2012 rent and moving fees.

On March 2, 2012 the landlord responded to the tenant's email and advised the tenant that he is willing to pay for moving expenses upon receipt of the bill, he only had 7 hours to clean but felt the rental unit was acceptable and that they *'both made a mistake caused by a limited time frame upon which to make a sound decision.'* The landlord acknowledged this email but stated that he felt pressured into responding that he would cover the tenant's moving expenses and it was only afterwards that he learned that he did not have to make this offer to the tenant.

The landlord stated that he contacted the previous tenant to find out what the white powder was and the tenant advised him that it was organic poison for silverfish as she had seen one in the rental unit. The landlord stated that the 2 containers of powder were under the sink and the tenant could have easily checked the label to verify what the powder was. The tenant stated that the 2 containers were not under the sink and that she never saw them.

The landlord stated that he received the keys to the rental unit on March 16, 2012 through Canada Post. The landlord then contacted the tenant to verify if she had in fact abandoned the rental unit however the tenant did not respond back to the landlord. The landlord then on March 22, 2012 took possession of the rental unit. The landlord stated that he then purchased a 'Landlord Guidance Kit' and joined a rental owner's organization. The landlord stated that as of April 16, 2012 the rental unit was advertised for rent and new tenants were secured for May 1, 2012.

The parties send numerous emails back and forth and on March 6, 2012 the landlord advises the tenant that he will return ½ month's rent, will return the security deposit but will not pay any moving fees.

The tenant stated that because if the conditions in the rental unit she was justified in breaking the lease and should be entitled to return of the March rent, her security deposit and moving expenses.

The landlord stated that if the tenant had found the rental unit to be in such bad condition that she could have easily vacated the same evening that she took possession for the rental unit and much of this could have been avoided. The tenant responded by stating that she had nowhere else to take her belongings and that she would have had to pay a penalty for not returning the moving truck on time.

Analysis

Based on the documentary evidence and testimony of the parties I find that the landlord is entitled to a monetary order for unpaid rent and loss.

The tenant entered into a fixed term tenancy and when the tenant discovered that there were issues in the rental unit, the tenant did contact the landlord however the tenant did not give the landlord an opportunity to respond and address any of the tenant's concerns. Therefore the landlord is entitled to keep the \$1150.00 March 2012 rent. In regards to the landlord seeking \$1150.00 loss of rental income for April 2012; as the landlord did not take steps prior to April 15, 2012 to mitigate any loss of rental income that he may incur the landlord is entitled to the limited amount of \$575.00.

Accordingly I find that the landlord is entitled to a monetary order for \$1725.00.

Based on the documentary evidence and testimony of the parties I find that the tenant is entitled to a monetary order for loss.

The landlord and tenant communicated by email on a regular basis and I accept the landlord's email of March 2, 2012 as an agreement in writing that the landlord will reimburse the tenant for any moving expenses. Therefore the tenant is entitled to \$402.64 compensation for moving and storage and \$89.51 compensation for moving fees. However as the tenant broke the fixed term tenancy and vacated without allowing the landlord the opportunity to address any concerns she had the tenant is not entitled to return of the \$1150.00 March 2012 rent.

Accordingly I find that the tenant is entitled to a monetary order for \$492.15.

These two awards offset each other with a resulting balance of \$1232.85 due to the landlord. ($\$1725.00 - \$492.15 = \$1232.85$). The balance due to the landlord will then be offset by the \$575.00 security deposit.

As both applications had some merit I decline either parties requests to recover the \$50.00 filing fee.

Conclusion

The tenant has been awarded \$492.15 compensation for loss.

The landlord has been awarded \$1725.00 compensation for unpaid rent and loss.

I find that the landlord has established a monetary claim for \$1725.00 in unpaid rent and loss. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$575.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$675.85**.

If the amount is not paid by the tenant(s), 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: May 9, 2012

Residential Tenancy Branch