



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlords for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of this application.

A hearing had been held on April 4, 2012 wherein a copy of the tenancy agreement was provided which did not contain the name of the landlord who was named in the Landlord's Application for Dispute Resolution. An agent for the landlord was the named landlord in the application who attended that hearing and testified to being the spouse of the landlord. The hearing resulted in an order that the landlord amend the Landlord's Application for Dispute Resolution and serve the tenant with a copy of that amended document, together with the notice of a new hearing provided by the Residential Tenancy Branch, a copy of the interim Decision made on April 4, 2012, and all evidence that the landlord intended to rely on at the new hearing, either personally or by registered mail within 3 days of receiving the Decision and the new notice of hearing. The landlord complied with that order by filing an amended Landlord's Application for Dispute Resolution and provided evidence of having served the documents upon the tenant by registered mail on April 13, 2012. The documents were sent by registered mail to 3 addresses of the tenant. The *Residential Tenancy Act* provides that documents served in that manner are deemed to have been served 5 days after such service, and I find that the tenant has been served in accordance with my order and the *Residential Tenancy Act*. Despite being served, the tenant did not attend the hearing.

The landlords named in the amended application attended the hearing, gave affirmed testimony and provided evidence in advance of the hearing, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Are the landlords entitled to a monetary order for damage to the unit, site or property?
- Are the landlords entitled to a monetary order for unpaid rent or utilities?
- Are the landlords entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Are the landlords entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed-term tenancy began on August 1, 2007 and expired on July 31, 2008, and then reverted to a month-to-month tenancy. The tenancy ultimately ended on October 30, 2011. Rent in the amount of \$2,400.00 per month was payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit in the amount of \$1,137.50. The landlord testified that the tenancy agreement states that rent is \$2,475.00 per month but \$200.00 per month was for payment of utilities, and the actual rent at that time was \$2,275.00, which was raised from time-to-time. Also provided as evidence are 3 documents entitled Notice of Rent Increase, Residential Rental Units. The first is dated April 27, 2008 which increases the rent from \$2,275.00 per month + \$200.00 utilities to \$2,300.00 per month + \$200.00 utilities effective August 1, 2008. The next is dated February 23, 2010 which increases the rent from \$2,300.00 per month + \$200.00 utilities to \$2,350.00 per month + \$200 utilities, effective June 1, 2010. The final notice is dated February 26, 2011 which increases the rent from \$2,350.00 per month + \$200.00 utilities to \$2,400.00 per month + \$200.00 utilities effective June 11, 2011.

The landlord further testified that the tenant did not give notice to vacate the rental unit. On October 26, 2011 the landlord saw the tenant putting boxes in the tenant's motor vehicle and the landlord became suspicious. On October 30, 2011 the landlord received an email from the tenant stating that the tenant would return to the rental unit at 12:00 noon return the keys to the rental unit, look over the house, and retrieve the security deposit. A copy of the email was provided in advance of this hearing, and it does not contain a forwarding address for the tenant. The landlord saw a moving truck in the driveway of the rental unit and followed it to another home to ascertain where the tenant was moving. The landlord also testified that 2 forwarding addresses were provided by the tenant, but the landlord served the tenant with notice of this proceeding and the application at the 2 addresses provided by the tenant and at the address the landlord witnessed the tenant move to.

The landlord also provided a copy of an email from the tenant to the landlord dated October 31, 2011 which contains a forwarding address for the tenant.

The landlord also provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 2, 2011 which states that the tenant failed to pay rent in the amount of \$2,400.00 that was due on October 1, 2011 and that the tenant failed to pay utilities in the amount of \$200.00 following written demand on October 2, 2011. The notice contains an expected date of vacancy of October 12, 2011.

The landlord further testified that the rental unit was re-rented on January 1, 2012 for \$2,400.00 per month. The landlord advertised the rental unit on Craigslist, the Vancouver Sun and the Province newspapers for \$2,400.00 plus \$200.00 per month for utilities, although no evidence of the advertisements, nor any receipt for the cost of such advertisements, has been provided. The landlord claims \$2,400.00 for loss of revenue for the month November, 2011.

The landlord further testified that this is the fourth time the parties have been to dispute resolution. In the first hearing, the landlord and the tenant applied for relief but the tenant did not attend the hearing, and the landlord withdrew the application for an Order of Possession because the tenant had moved out of the rental unit prior to the hearing date. The landlord filed a subsequent application on November 8, 2011 which was dismissed by a Dispute Resolution Officer on January 30, 2012 with leave to reapply. The third hearing was the commencement of this hearing which resulted in an interim decision that the landlord amend the application.

The landlord claims damages to the rental unit, including cleaning that the landlord testified that the tenant did not complete before vacating. A copy of the move-in condition inspection report was provided for this hearing, and the landlord testified to completing the move-out condition inspection report portion in the absence of the tenant. The same form was used for the move-out condition inspection that was used for move-in, but the move-out portion is not dated. The landlord testified that it was completed on October 31, 2011. The landlord testified to the following damages:

- The blinds in all the rooms were dirty and some were broken. The landlord claims \$185.92 and has provided an invoice dated November 8, 2011 for cleaning 9 blinds at \$8.00 per blind, 6 blinds at \$11.00 per blind, 4 "overheight" at \$2.00 each and replacing 5 cord retainers at \$4.00 each, in addition to \$11.62 HST and \$8.30 GST;
- Further, the shelving in the fridge was broken and the kick plate on the appliance was broken. The landlord provided a service order dated December 1, 2011 which includes a bar costing \$29.00, clamps costing \$3.00, among other things.

The landlord has written on the service order which items apply to this tenancy, and includes an additional \$30.00 for labour, although the cost on the actual service order is \$129.00. The landlord claims \$62.00 for the repair;

- The shades on the track light in the bathroom were also broken, which could not be replaced. The landlord testified that the fixture is such that the entire fixture must be replaced, for which the landlord claims \$55.99 and have provided a copy of a receipt for that item.
- The door in the kitchen is a wooden hollow bi-fold door which has a broken portion that appears to have been kicked in on both sides. The receipt provided by the landlord shows 2 doors and only one was broken, therefore the landlord is only claiming \$44.99 for the \$100.78 bill, in addition to \$60.00 for installation; the landlord purchased 2 so they would match.
- The landlord also provided an invoice for the installation of the bi-fold door and for the sliding glass mirrored doors that required placing back on its track at a fee of \$10.00 (both items are on the same invoice).
- The landlord further testified that the floor register in the den was left broken by the tenant as well as ripped screens in the living room. The landlord provided evidence of the cost for the repairs at \$28.45, being \$12.86 for the register and \$15.59 for the frame for the screen. Another receipt has been provided at \$16.17 for the actual screen.
- The hardwood floor was left with copious amounts of stains in the living room, dining room and den where varnish was actually stripped off the floor. The landlord testified that the cost for the repairs were \$1,201.20 and provided an invoice for that repair.
- The toilet paper holder had been replaced by the tenant with a piece of wooden doweling and the original holder was missing. Also missing were the plugs for the bathroom, and the landlord claims \$6.26 for those items. A receipt for their purchase has also been provided.
- The landlord also claims \$20.00 per hour for 6 hours of cleaning, and provided photographs to establish that claim. The landlord also provided a written breakdown of the cleaning completed, being kitchen shelves, interior dishwasher, top and behind fridge, all kitchen cabinets, inside all five closets, inside washer and dryer, all bathroom cabinets (2 and a half baths), two bath tubs, around all window and patio door tracks.

The landlord claims damages as against the tenant in the amount of \$1,790.98 in addition to one month's rent for the tenant's failure to provide notice to vacate, and recovery of the \$50.00 filing fee for the cost of this application.

Analysis

In the circumstances, I find that the first named landlord, LM, is not a landlord, and the application by that person must be dismissed. All testimony provided by that person has been taken as a witness for the landlord. I further find that the second named landlord, MW, is the landlord in this tenancy.

The *Residential Tenancy Act* states that a landlord must give a tenant at least 2 opportunities to complete a move-out condition inspection report unless the tenant has abandoned the rental unit. In this case, I find that the tenant was served by the landlord with a notice to end the tenancy effective October 12, 2011. Presumably the tenant moved as a result of receiving that notice, but did not vacate the rental unit by October 12, 2011. The tenant remained in the rental unit and moved out without any notice to the landlord on October 30, 2011. Therefore, I find that the tenant has abandoned the rental unit.

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the Act or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to reduce, or mitigate such damage or loss.

I have reviewed the condition inspection reports provided by the landlord, and I find that the damages claimed are consistent with the reports.

I have also examined the receipts and invoices provided by the landlord, and find that the replacement or repairs from those receipts is consistent with the move-out condition inspection report.

The *Residential Tenancy Act* states that a tenant must leave a rental unit reasonably clean and undamaged except for normal wear and tear. In the circumstances, I find that the landlord has established a claim in the amount of \$1,790.98 for the tenant's failure to comply with that section of the *Act*.

I further find that the tenant is responsible for the payment of November's rent for not giving the landlord any notice of the tenant's intention to move from the rental unit. I accept that the tenant was served by the landlord with a notice to end tenancy effective October 12, 2011, however the general rule is that the tenant is responsible for any loss

of revenue because if the tenant had given the landlord notice to vacate the rental unit on October 12, 2011 or at any time in the month of October, the notice would not take effect until the end of November, 2011.

The *Act* also requires a landlord to return a security deposit in full or apply for dispute resolution claiming against the security deposit within 15 days of the later of the date the tenancy ends or the date the tenant provides a forwarding address in writing. I am satisfied in the evidence before me that the tenant provided a forwarding address in writing on October 31, 2011. The landlord's original application was filed on November 8, 2011, which I find is within the 15 day period, and therefore, the tenant is not entitled to the credit of double the amount of the security deposit.

In the circumstances, I order the landlord to keep the security deposit of \$1,137.50 in partial satisfaction of the claim for loss of rental revenue and I grant the landlord a monetary order for the difference in the amount of \$1,262.50 in addition to \$1,790.98 for damages. Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I order the landlord to keep the security deposit in the amount of \$1,137.50 and I hereby grant a monetary order in favour of the landlord, MW, pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,103.48.

The application by the landlord, LM, is hereby dismissed without leave to reapply.

This order is final and binding on the parties and may be enforced.

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 15, 2012.

Residential Tenancy Branch