



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNSD, MNDC
For the landlord: MNSD, MNR, MND, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The tenant applied for a return of her security deposit, doubled, a monetary order for money owed or compensation for damage or loss and, through her evidence, for recovery of the filing fee.

The landlord applied for authority to retain the tenant's security deposit, a monetary order for unpaid rent and damage to the rental unit 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.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for recovery of her security deposit and of the filing fee?

Is the landlord entitled to a monetary order for damage to the rental unit and unpaid rent, authority to retain the tenant's security deposit and to recover the filing fee?

Background and Evidence

This one year, fixed term began on August 1, 2011, monthly rent was \$985.00 and the tenant paid a security deposit of \$492.50 on or about July 22, 2011.

I heard undisputed testimony from the landlord that the tenant moved out on September 22, 2011.

Tenant's claim-

The tenant's monetary claim is in the amount of \$985.00, which is recovery of her security deposit, doubled.

The tenant submitted that she gave the landlord her written forwarding address several times, with the first time being on September 1, 2011. The landlord's agent said that they received the tenant's written forwarding address on the last day of the tenancy, which was September 22, 2011.

The tenant claimed and the landlord agreed that the tenant has not been returned her security deposit. As well, the tenant said that she has not agreed to any deductions.

Landlord's claim-

The landlord's monetary claim is in the amount of \$2395.28, comprised of unpaid rent of \$985.00 for September 2011, liquidated damages of \$250.00, painting of \$504.00, carpet replacement of \$504.00, carpet cleaning of \$77.28, stove and oven cleaning of \$75.00 and replacement of a smoke detector.

The landlord's relevant evidence included the tenancy agreement, tenant ledger statement, a painting invoice, a carpet installation invoice, a smoke alarm replacement cost quote and copies of photos of the rental unit.

In support of their application, the landlord's agent testified that the tenant supplied written notice that she was vacating; however, the tenant did not vacate by September 1, 2011, and did not pay rent for September. As a result, the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), which caused the tenant to vacate.

The landlord submitted that the tenant caused damage to the rental unit, which included painting the walls of the unit to another colour and causing a paint stain, which necessitated a carpet replacement.

The landlord also submitted that the rental unit had to be cleaned, that the carpet had to be cleaned and that the smoke detector had to be replaced.

When questioned, the landlord's agent first stated that the age of the carpet could have been between 5-8 years of age and then later stated that the carpet was installed in 2004.

The landlord confirmed that there was no move in condition inspection report or move out condition inspection report.

In response, the tenant stated that all her dealings with the tenancy were with the former caretaker (BL), who is no longer employed by the landlord.

The tenant submitted that the former caretaker (BL) gave her permission to paint the walls and did not say that she would have to return them to the original colour. Additionally the tenant stated that although she did have a paint spill on the carpet, the carpet was already damaged at the start of the tenancy, with cigarette burns and dirt.

The tenant submitted that there were concerns about the rental unit prior to moving in, such as seeing mousetraps in the rental unit. The tenant said she was told by BL that there currently were no mouse problems. The tenant stated that she was promised a hand towel rack and counters in the bathroom, but was never provided them.

The tenant stated that in late August 2011, a plumbing problem occurred in the residential property, which caused water damage on four floors, including the rental unit. The tenant submitted that they were never informed by the landlord what the source of the leak was, but that it caused the tenant to walk on soggy carpets. The tenant submitted that the leaks caused mould growth and was not properly remediated by the landlord.

The tenant also submitted that she observed someone continuously coming into the residential property, who collected garbage and returned it to a rental unit. The landlord informed the tenant that he was another tenant of the property. The tenant claimed that this created a health hazard.

The tenant also expressed a concern for her safety when she observed a neighbour coming into a neighbouring rental unit with prostitutes. The tenant also testified about unreasonable noise during the night as a result of the prostitute activities.

The tenant stated that she went without heat for a weekend as she was not told how to use the heating system and then when she did, she heard gurgling sounds due to the broken pipes. Therefore she thought it would be best to turn it off due to safety concerns.

The tenant submitted that she addressed her safety and health concerns to BL, but none were resolved. The tenant further stated that BL informed her to put her concerns in writing and that she did so.

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 party claiming for the damage or loss has the burden of proof to establish their claim as follows:

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, both parties bear the burden of proof.

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

Tenant's application

The *Act* requires a landlord to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of receiving the tenant's forwarding address in writing after the end of the tenancy. In the event the landlord fails to comply with this requirement, then the landlord must pay the tenant double their security deposit.

In this case, the undisputed evidence of the tenant shows that the landlord received the tenant's written forwarding address no later than the last day of the tenancy, which was September 22, 2011 and did not return the tenant's security deposit or file an application within fifteen days of that date.

I therefore grant the tenant's application for dispute resolution and find that she has established a monetary claim of \$1035.00, which is her security deposit of \$492.50, doubled, and recovery of the filing fee.

Landlord's Application

Unpaid rent for September 2011- I accept that the tenant ended her tenancy early by vacating the rental unit as of September 22, 2011, in violation of the Act. The tenant was required to end this tenancy by giving the landlord written notice of at least 1 clear

month, no earlier than the end of the fixed term, unless the tenant could show that the landlord had breached a material term of the tenancy agreement and had not corrected the problem within a reasonable timeframe pursuant to section 45(3) of the *Act*.

The tenant argued that she was entitled to end this tenancy early due to the landlord's failure to address her issues with the leaking water, lack of heat, issues with other tenants' behaviour, lack of repair and other issues which she believed placed her health and safety in jeopardy and as well as depriving her of her right to quiet enjoyment of the rental unit.

I accept the tenant's arguments. The tenant stated that she submitted written documentation of her requests and has proved to my satisfaction that the landlord failed to respond to her reasonable requests. I find the landlord submitted insufficient evidence to rebut the evidence of the tenant due to their failure to ensure BL's attendance at the hearing.

Section 32 of the *Act* requires a landlord to provide and maintain a residential property in a state that complies with the health, safety and housing standards required by law and having regard for the age, character and location of the rental unit, make it suitable for occupation by a tenant.

Section 33 of the *Act* requires the landlord to make emergency repairs where they are urgent, necessary for the health or safety of anyone or for the preservation or use of the residential property; and are required for the primary heating system.

The landlord provided no testimony or evidence that they ever addressed the issue of lack of heating or the running water with the tenant. I find that the landlord did not act promptly, reasonably and as required by the *Act* in responding to the tenant's water leak and lack of heating.

Due to the above, I find the landlord fundamentally breached the tenancy agreement and the *Act*. I find the only remedy was to end the tenancy.

Under sections 62 and 44(1)(f) of the *Act*, I order the tenancy ended effective September 22, 2011, the date the tenant vacated the rental unit.

As I have found that the tenancy ended on September 22, 2011, by the landlord's own actions, I find the landlord is not entitled to loss of rent revenue for the entire month of September.

I find that the landlord has established a monetary claim for the loss of prorated rent revenue through the end of the tenancy, in the amount of \$712.36, ($\985.00×12 months per year = \$11,820.00 yearly rent, $\div 365$ days per year = \$32.38 daily rent rate $\times 22$ days, September 1-22, = \$712.36).

Liquidated damages-As I have found that the tenancy ended due to the landlord's fundamental breach of the Act and tenancy agreement, I likewise find that the landlord is not entitled to liquidated damages of \$250.00. I therefore dismiss their claim for \$250.00, without leave to reapply.

Painting, carpet replacement, carpet cleaning, stove/oven cleaning, replacement of smoke detector- I find that the landlord has failed to comply with the Act by their failure to offer the tenant at least 2 opportunities at the beginning and end of the tenancy and to complete a move-in or move-out condition inspection report.

In the absence of a condition inspection report depicting the state of the rental unit both before and after this tenancy, I find there to be insufficient evidence to meet the burden of proof establishing that the tenant committed damage or left the rental unit in an unclean state. A condition inspection could easily reveal such condition of the rental unit.

I therefore **dismiss** the landlord's claim for damages and cleaning, with the exception of the carpet stain, due to the tenant's acknowledgment that she spilled paint.

As to the amount for which the tenant should be liable, the landlord gave conflicting evidence during the hearing, originally stating she believed the carpet was between 5-8 years old, then contradicted herself by saying the carpet was installed in 2004.

Residential Tenancy Branch Policy Guideline 40 provides for the useful life of building elements, and in this case the useful life of carpets is 10 years old. After 10 years, a carpet would be fully depreciated and the landlord would not be entitled to its replacement costs.

The Guideline also states that the landlord should provide evidence of the age of the building element in question. In this case the landlord provided no documentary evidence and contradictory oral evidence as to the age of the carpet and I therefore found I could not rely on her testimony.

I therefore find that the landlord has submitted insufficient evidence to prove that they are entitled to reimbursement of carpet replacement costs for the balance of the useful life of the carpet in question.

Due to the above, I dismiss the landlord's monetary claim for painting, carpet replacement, carpet cleaning, stove/oven cleaning, and replacement of a smoke detector, without leave to reapply.

I find the landlord's application had partial merit and I award them recovery of a partial filing fee in the amount of \$25.00.

Conclusion

The tenant has established a monetary claim in the amount of \$1035.00, comprised of her security deposit doubled and recovery of the filing fee.

The landlord has established a monetary claim of \$737.36, comprised of loss of rent for September 2011 in the amount of \$712.36 and recovery of a partial filing fee of \$25.00.

From the tenant's monetary claim, I deduct the amount of the landlord's monetary claim and grant to the tenant a monetary order for the balance due in the amount of \$297.64 pursuant to section 67 of the Act.

I am enclosing a monetary order for \$297.64 with the tenant's Decision. This monetary 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: May 22, 2012.

Residential Tenancy Branch