



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for compensation for damage to the unit, site or property, for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on May 3, 2012. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are there damages to the unit, site or property and if so how much?
2. Is the Landlord entitled to compensation for the damages and if so how much?
3. Are there losses or damages to the Landlord and if so how much?
4. Is the Landlord entitled to compensation for the any losses or damages and if so how much?
5. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on November 1, 2011 as a fixed term tenancy with an expiry date of April 30, 2012. Rent was \$2,000.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$1,000.00 on October 20, 2011. The Tenant said they moved out of the rental unit on May 2, 2012 and she gave the Landlord proper written notice on March 31, 2012 for April 30, 2012. The Landlord said the Tenants moved out of the unit on May 2, 2012.

The Landlord said she is claiming the loss of rent for May, 2012 of \$2,000.00 because the Tenant moved out of the rental unit on May 2, 2012, which was 2 days after the date on the written Notice to End Tenancy that the Tenant gave the Landlord dated March 31, 2012 and that the Tenants unit was very cluttered which made the unit difficult to show and subsequently difficult rent to a new tenant. The Landlord said they had a number of potential tenants look at the unit while the Tenant was still in the unit and the Landlord said the potential tenants did not rent the unit because of the Tenant's clutter

in the rental unit. The Landlord provided a witness letter and a witness to testify that this was the case.

As well the Landlord said she is claiming \$200.00 as an estimate to repair the scratches in the floor and \$4.00 for replacement light bulbs.

The Tenant said the clutter in the unit was because there was very little storage in the unit and no storage in the rental complex and that she was organizing her belongings to move at the end of the tenancy. The Tenant said this is the time the Landlord showed the unit to potential tenants. The Tenant said the state of belongings had no bearing on whether the unit rented because she considered the unit to be a difficult property to rent because of the lay out and because there is little storage. The Tenant agreed that she did not complete the move until May 2, 2012, because she had difficulties with the people who were helping her move on April 30, 2012 and May 1, 2012. The Tenant said she contacted the Landlord's husband and told him she needed more time, and that she rescheduled the move out condition inspection for May 2, 2012. The Tenant said she is not responsible for the rent for the month of May, 2012.

The Tenant continued to say the damage to the floors is not correct as the move in condition inspection report shows damage to the floors and they are only listed as fair condition. The Tenant said she did not damage the floors. The Tenant said that she missed replacing the light bulbs in the rush to move out of the unit on May 2, 2012.

The Landlord said she is also seeking to recover the filing fee for this proceeding of \$50.00.

Analysis

Section 57 says that a tenant who occupy's a rental unit after the tenancy ends is an **overholding tenant**. In a situation where there is an overholding tenant the landlord is entitled to compensation for the period the overholding tenant occupies the rental unit after the tenancy ends.

In this situation the Tenant and Landlord both agree the Tenant did not move out until May 2, 2012 and the Tenant said the delay was because of moving difficulties not that she was living in the unit. Consequently I find that the Landlord has established grounds for a claim of for the 2 days that the Tenant was overholding. Consequently the Landlord is entitled to the rent $\$2,000.00 \times 2 \text{ days} / \text{by } 31 \text{ days in May} = \129.00 for compensation for unpaid rent in May, 2012. As well I dismiss the Landlord's claim for the rent of \$2,000.00 for the full month of May, 2012 as I deem the Tenant to be overholding not residing in the unit.

Further as the move in condition inspection report identifies damage to the floors on move in and Section 32 (4) allows for normal wear and tear during a tenancy; I find the Landlord has not established grounds to be granted \$204.00 for damage to the floors and for the replacement light bulbs as the bulbs are considered to be normal wear and tear. Consequently I dismiss the Landlord's claim for damages to the unit without leave to reapply.

As the Landlord has only been partially successful in this matter, the Landlord is also ordered to bear the cost of the filing fee of \$50.00 which she has already paid.

Further as the Landlord has not returned the Tenant's security deposit of \$1,000.00, I order the Landlord to deduct \$129.00 (for the time the Tenant overhired in the unit) from the security deposit of \$1,000.00 or $\$1,000.00 - \$129.00 = \$871.00$. I further order the Landlord to return \$871.00 to the Tenant forthwith and I have issued a monetary order to the Tenant for \$871.00, which the Tenant can enforce in Province Court of British Columbia if the Landlord does not return the balance of the security deposit forthwith.

Conclusion

The Landlord's claims for damages to the unit are dismissed without leave to reapply.

I award the Landlord \$129.00 for the 2 days in May, 2012 that the Tenant overhired in the rental unit.

A Monetary Order in the amount of \$871.00 has been issued to the Tenant. A copy of the Order must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.

Residential Tenancy Branch