



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened as the result of the landlord's Application for Dispute Resolution under the Residential Tenancy Act (the "Act") for an order of possession for the rental unit based upon unpaid rent, for a monetary order for money owed or compensation for damage or loss, for damage and unpaid rent, to keep all or part of the tenants' security deposit, and to recover the filing fee for the Application.

The landlord and tenant appeared, the hearing process was explained and the parties were given an opportunity to ask questions about the hearing process. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, 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 landlord entitled to an order of possession for the rental unit, a monetary order, for authority to retain the tenant's security deposit and to recover the filing fee?

Background and Evidence

This one year, fixed term tenancy began on March 1, 2012, monthly rent is \$1325.00 and the tenants paid a security deposit of \$662.50 on or about February 4, 2012.

The landlord's total monetary claim is \$4217.00, comprised of unpaid rent of \$1325.00 for June 2012, stolen appliances for \$285.00, a bounced cheque for \$392.00 and \$2500.00 for an insurance deductible.

The landlord's relevant evidence included a binder comprised of the tenancy agreement, the Notice, a 1 Month Notice to End Tenancy for Cause, text messages between the parties, photos of the rental unit, a plumber's invoice and strata letters.

The landlord gave affirmed testimony and supplied evidence that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on May 21, 2012, by personal delivery. The Notice stated the amount of unpaid rent as of May 1, 2012 was \$1325.00. The effective vacancy date was May 30, 2012. The Notice also mentioned missing appliances.

The Notice informed the tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenants had five days to dispute the Notice.

When questioned, the landlord acknowledged that the tenant paid rent of \$1000.00 on May 9, 2012, and agreed that the total rent owing at the time the Notice was issued was \$325.00. The landlord further agreed, after testimony from the tenant, that the balance of the rent of \$325.00 was paid within 5 days of the tenant receiving the Notice.

Insurance deductible-The landlord submitted that on May 4, 2012 the tenant contacted her concerning water coming from the washing machine, to which the landlord asked the tenant to assess the problem and turn off the water source. According to the landlord, the tenant did not find the water source or properly clean the excess water and upon the landlord's entry into the rental unit, the water was discovered to be coming from the lower washroom. The landlord stated that as of this date, the water source has not been determined; however, the tenant's actions caused the landlord to incur the expense of an insurance deductible.

When questioned, the landlord confirmed that as of the date of the hearing, she had arranged with the strata to make payments on the deductible and that she had not submitted evidence of incurring a cost.

The tenant said that the water leak started when she was away and upon returning, she observed water coming from the washing machine and water was all along the hallway. After calling the landlord, the tenant said she was instructed to mop up the floor, which she did. The tenant said a plumber attended the rental unit and could not determine the water source, making a note that the toilet in the lower washroom and the adjoining property both were loose.

Appliances-The landlord submitted that when the tenancy began, as the stove was cracked, the tenant stated that she could find a suitable replacement along with a dishwasher on a popular internet website. The landlord stated that although she paid for the used appliances, those appliances have yet to be installed. Therefore the landlord claimed that the appliances were stolen.

The tenant asserted that when she moved in, the dishwasher leaked which caused damage to the floor. The tenant informed the landlord that her father was a contractor and could make the repairs.

The tenant said that the landlord agreed to let her father make the repairs, but later made him stop before completion. The tenant said that the stove, which is still damaged, is still in the rental unit and the dishwasher, which she did purchase, is at her father's residence as the floor is not repaired yet.

Bounced cheque-This issue revolves around the landlord's agreement to pay the tenant's father in making repairs to the rental unit, with the landlord contending that she informed the tenant she would only pay once the repairs have been completed. Therefore, the tenant wrote a cheque for the balance of rent due, which was returned NSF.

The tenant stated that her father gave the landlord a scope of work bill, to which the landlord agreed; however, the landlord stopped her father from completing the work.

Rent for June-The landlord stated that the tenant did not pay rent for June on the due date, but confirmed that the tenant paid \$1000.00 on June 5.

The tenant contended that the landlord owes money for work performed.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

Order of Possession-If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant.

In the circumstances before me, I find the landlord's Notice to be deficient and therefore unenforceable. In reaching this conclusion, the landlord agreed that only \$325.00 was owed on the day the Notice was issued, not \$1325.00 as listed on the Notice. Additionally the tenant paid the remaining balance within 5 days of receiving the Notice.

Therefore, I find the 10 Day Notice to End Tenancy dated May 21, 2012, is invalid and of no force or effect and I hereby **dismiss** the landlord's application for an order of possession, with the effect that this tenancy continue until it otherwise ends under the Act.

I have not considered the landlord's 1 Month Notice to End Tenancy for Cause as the Notice was issued subsequent to the application and was not applied for.

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **third**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **last**, 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, the onus is on the landlord to prove damage or loss.

Insurance deductible-I find the landlord submitted insufficient evidence to substantiate that the tenant was negligent in creating the water damage. I accept the testimony of the tenant that she immediately notified the landlord of the leaking water and took appropriate measures to mop up the water.

In the words of the landlord, the source of the water leak is undetermined and I cannot therefore hold the tenant responsible for such a water leak.

Additionally, the landlord did not submit evidence that she has incurred a loss as of the day of the hearing. I therefore dismiss her claim for \$2500.00, without leave to reapply.

Appliances-The undisputed evidence shows that the appliance in question has been purchased and placed temporarily in the tenant's father's home, pending completion of the repairs to the floors in the rental unit. I find the landlord's accusations that the appliance was stolen to be questionable. I therefore find the landlord submitted insufficient evidence of "stolen" appliances and I dismiss her claim for \$285.00, without leave to reapply.

Bounced cheque-The landlord failed to provide sufficiently clear evidence that this issue involved an issue of the tenancy and not one dealing with the issue of repairs to the rental unit by the tenant's father.

Additionally, the landlord submitted insufficient evidence of a returned cheque or that she incurred a loss. I therefore dismiss her claim for \$392.00, without leave to reapply.

June rent-I find that the tenant has paid \$1000.00 of her monthly rent obligation of \$1325.00. I therefore find the landlord has established a monetary claim of \$325.00.

Filing fee-I find the landlord's application contained partial merit and I therefore award her a partial filing fee in the amount of \$25.00.

Conclusion

I find the landlord has established a total monetary claim in the amount of \$350.00, comprised of unpaid rent for June in the amount of \$325.00 and partial recovery of the filing fee in the amount of \$25.00.

I grant the landlords a monetary order for \$350.00, which I have enclosed with the landlords' Decision. This order is a legally binding, final order, and it may be filed in the Provincial Court of British Columbia (Small Claims) should the tenants 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: June 20, 2012.

Residential Tenancy Branch