



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNDC, MNSD, RPP

For the landlords: MNSD, MNDC, MNR, MND, FF

Introduction

This hearing dealt with the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The tenant applied for a return of his security deposit, a monetary order for money owed or compensation for damage or loss and for an order requiring the landlord to return the tenant’s personal possessions

The landlord applied for authority to retain the tenant’s security deposit, a monetary order for money owed or compensation for damage or loss, 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, to refer to documentary evidence timely submitted 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, which includes his security deposit, and to an order requiring the landlord to return the tenant’s personal possessions?

Is the landlord entitled to a monetary order, authority to retain the tenant’s security deposit and for recovery of the filing fee?

Background and Evidence

The landlord submitted a copy of a tenancy agreement; however the document was unclear as to the details of the tenancy. I heard undisputed testimony that this single room occupancy began in late March 2011, ended on July 1, 2012, when the tenant vacated the rental unit, monthly rent was \$550.00 and the tenant paid a security deposit of \$275.00 at the beginning of the tenancy.

Tenant's application-

The tenant's monetary claim is \$1225.00, which includes his security deposit and the value of his personal property still in the rental unit and stress in dealing with the tenancy issues with the landlord.

In support, the tenant said that when he moved, he retrieved many of his items; however, the landlord prevented him from removing two dressers, one an antique that has been in his family for over 100 years and the other one his grandmother had given him.

The tenant spoke of a verbal altercation with the landlord when he was gathering his belongings, which resulted in the police being called.

The tenant said that he has not been returned his security deposit and that he provided the landlord with his written forwarding address when he served the application for dispute resolution.

In response, the landlord said the dressers were still in the rental unit and that the tenant can come to the rental unit at any time to retrieve the items.

The landlord's version of the altercation differed from the tenant's version, with the landlord saying that the tenant's friend helping him started shouting obscenities at the landlord, resulting in the landlord also calling the police.

Landlord's application-

The landlord's monetary claim is \$1710, which includes unpaid rent for June of \$550.00, loss of revenue for July for \$550.00, cleaning of the rental unit for \$300.00, removing the bed in the rental unit for \$40.00, replacing the bed for \$200.00, hiring someone to remove the tenant's personal property for \$20.00 and the filing fee of \$50.00.

In support, the landlord said that the tenant did not pay rent in June and that he lost revenue for July after the tenant vacated; therefore he was entitled to \$1100.00.

The landlord said that the tenant left the rental unit in a condition which required cleaning and removal of items. The landlord said that the tenant's smoking habits caused the landlord to replace the bed, which came with the rental unit.

When questioned, the landlord confirmed that he did not have a receipt for cleaning the room, for getting rid of the bed and for hiring someone to move the tenant's personal property. The landlord also confirmed that he had not purchased a new bed as of yet.

The landlord confirmed not having a move-in or move-out condition inspection report.

Analysis

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 both parties to prove damage or loss.

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* states that the landlord must repay the security deposit to the tenant or make application for dispute resolution claiming against the security deposit within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing. In this case the tenant delivered his forwarding address in his application, which was not served on the landlord until July 9, 2012, via registered mail. The landlord filed an application claiming against the security deposit on July 13, 2012. Therefore the security deposit will not be doubled.

As to the tenant's claim for a monetary order for the dressers, the parties have mutually agreed to the following: The landlord will move the dressers to the outside of the

residential property and have the gates unlocked by 2:00 p.m. on Wednesday, August 1, 2012 in order that the tenant may retrieve the two dressers. The tenant will bring a friend other than the one attending on the day in question when the verbal altercation occurred. The parties agreed that this transaction will be conducted in a civil manner.

The parties are granted leave to reapply for compensation should the landlord fail to have the dressers ready for retrieval or should the tenant fail to retrieve the dressers on the day and time agreed upon.

Landlord's application-

I accept that the tenant owed rent for June under the tenancy agreement of the parties and failed to do so, which resulted in the landlord issuing the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"). The effective move out date listed on the Notice was June 12, 2012 and the tenant actually moved out on July 1, 2012.

I therefore find the landlord is entitled to unpaid rent of \$550.00 for June 2012.

As to the loss of revenue for July, the landlord is required to take reasonable measures to re-rent the rental unit as expeditiously as possible in order to minimize his loss, which is step four of his burden of proof.

I find the landlord submitted insufficient evidence that he mitigated her loss. In reaching this conclusion, I was influenced by the lack of proof of advertising of the rental unit or proof on any other methods of re-renting.

Without further proof, I cannot conclude that the landlord took reasonable measures to mitigate his loss for July 2012. I therefore dismiss his claim for loss of revenue for July for \$550.00, without leave to reapply.

As to the balance of the landlord's monetary claim, the landlord submitted insufficient evidence of a loss verifying his claim, such as with receipts, invoices or cancelled cheques.

I therefore dismiss the landlord's claim for cleaning of the rental unit for \$300.00, removing the bed in the rental unit for \$40.00, replacing the bed for \$200.00, and hiring someone to remove the tenant's personal property for \$20.00, without leave to reapply.

As the landlord's application had some merit, I allow the landlord recover of the filing fee of \$50.00.

Conclusion

The parties have agreed that the tenant may retrieve his personal property, the dressers, after 2:00 p.m. on Wednesday, August 1, 2012, and to conduct themselves in a civil manner during the transaction.

As the parties have agreed that the tenant may retrieve his personal property, I dismiss the tenant's application for the value of the personal property, with leave to reapply in the event the landlord does not have the personal property available at the agreed upon time.

As to the landlord's application, I find the landlord has established a monetary claim of \$600.00, comprised of unpaid rent of \$550.00 for June 2012 and recovery of the filing fee of \$50.00.

I allow the landlord to retain the tenant's security deposit of \$275.00 in partial satisfaction of his monetary claim and I grant the landlord a final, legally binding monetary order in the amount of \$325.00 for the balance due, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement.

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: July 31, 2012.

Residential Tenancy Branch