



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage or loss under the Act, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matter

The landlord's application detailed a claim for damage to the rental unit; testimony and consideration of that claim was considered.

The landlord served the tenant copies of the photographs that were not in the same form as those supplied to the Residential Tenancy Branch (RTB); the tenant's copies were black and white photocopies; the RTB copies were in colour. Therefore, as each party did not have identical copies, the photographs were set aside.

The only evidence before me was a copy of the condition inspection report.

The landlord said he would have supplied more evidence if he had been told he was required to do so. I pointed out the general information section of the Notice of hearing given to the landlord, which he used to sign into the conference call hearing. The Notice informs parties that evidence supporting a claim must be given to each party and the RTB within required time frames.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage and damage and loss in the sum \$2,798.15?

May the landlord retain the deposit paid?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced in August 2008; a \$1,750.00 deposit was paid at the start of the tenancy. A move-in condition inspection report was completed. A copy of the tenancy agreement was not supplied as evidence.

The tenancy ended on April 30, 2012, as the result of the sale of the home and a 2 Month Notice to End Tenancy for Landlord's use; the new owner wished to have vacant possession of the unit.

A move-out condition inspection was completed on April 30, 2012; the tenant did not sign the report. The parties disagreed as to what happened on April 30, 2012; the tenant said he gave the landlord his forwarding address, which the landlord wrote down on a piece of paper. The landlord stated he did not write the address down but committed the address to memory. The tenant said he was not given the opportunity to sign the report.

On May 7, 2012 the tenant sent the landlord an email that requested return of the deposit and provided the tenant's address. The landlord said he received that email on May 25, 2012 at which time he issued and mailed a cheque in the sum of \$627.82 to the tenant. The landlord retained the balance of the deposit.

The landlord has claimed compensation for the tenant's failure to carry out routine yard maintenance during the tenancy. The tenant also caused damage to the rental unit that resulted in a loss to the landlord.

The tenant questioned the landlord's claim as he had not supplied evidence verifying a loss. The tenant also pointed out that the landlord had sold the home and could not have made or intend to make repairs to property he no longer owns. Further the tenant denied having caused any damage to the unit.

The landlord stated that the tenant had a responsibly to leave the home without any damage and that he had failed to comply with a term of the tenancy requiring regular yard maintenance.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In the absence of any evidence verifying the landlord's monetary claim I find that the claim is dismissed. Further, the landlord could not provide an adequate explanation as to how the landlord had incurred costs related to a property that he no longer owned. There was no submission that the landlord had given the purchasers any compensation for damage allegedly caused by the tenant or that repairs had been made prior to completion of the sale of the home.

Residential Tenancy Branch policy suggests that when a landlord applies to retain the deposit, any balance should be ordered returned to the tenant; I find this to be a reasonable stance. The tenant is holding a cheque in the sum of \$627.82, which he is at liberty to cash. I find that the tenant is entitled to return of the deposit in the sum of \$1,750.00 plus interest of \$10.97; less the \$627.82 held by the tenant. A monetary Order has been issued to the tenant.

If the tenant is able to negotiate the cheque of \$627.82; the monetary Order will be reduced by the amount. If the tenant is unable to negotiate the cheque, it must be surrendered to Small Claims Court at the time enforcement of the monetary order is attempted.

Conclusion

The claim is dismissed.

The landlord is Ordered to return the deposit to the tenant.

Based on these determinations I grant the tenant a monetary Order for \$1,760.97. This amount shall be adjusted downward by the sum of \$627.82, unless the tenant provides the original cheque in the sum of \$627.82 to Small Claims Court at the time enforcement is initiated. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 27, 2012.

Residential Tenancy Branch