



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all or part of the security and/or pet deposit, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Landlord be issued a Monetary Order?

Background and Evidence

The parties agreed they entered into a fixed term tenancy agreement that began on June 1, 2011 and ended May 31, 2012. Rent was payable on the first of each month in the amount of \$1,625.00. On May 6, 2011 the Tenant paid \$812.00 as the security deposit and on May 24, 2011 the Tenant paid \$812.00 as the pet deposit. A move in inspection was conducted on May 23, 2012 and a move out inspection was conducted on May 30, 2012.

The Tenant stated that he provided his forwarding address to the Landlord three times. At first he provided it verbally during the move out inspection, secondly in an e-mail on June 4, 2012, and then formally in a written letter sent on June 8, 2012 as he was told he must send it formally.

The Landlord acknowledged receiving the Tenant's forwarding address by e-mail on June 4, 2012. She confirmed that she sent the Tenant a letter to his new address the same day she received this e-mail. She also confirmed receiving his forwarding in writing dated June 8, 2012.

The Landlord submitted evidence to support her claim for additional hydro costs which included, among other things, copies of: e-mails written to all tenants, an e-ticket, e-mails to BC Hydro regarding months when hydro meters were not read because hydro staff did not have key, hydro history, and the tenancy agreement.

The Landlord asserts that the Tenant repeatedly increased the thermostat temperature in the common hallway, storage area and tampered with the dryer vent and propped the laundry room door open to allow the heat to escape into the hallway. She stated that she only witnessed the Tenant propping the laundry room door open and that he closed it after she requested he not do that. She confirmed that there were no witnesses who saw the Tenant change the thermostat, remove the Christmas wreath, or plug in a portable heater in the hallway.

The Tenant advised that his rental unit was one of five separate suites that were constructed in a very large, old home. He submitted that all of the tenants in the building discussed the problem with the temperature and not just him. The Tenant confirmed that there were times when he turned the hallway thermostat up to room temperature but that did not last long because the Landlord had the heater disconnected in December 2011. He denies plugging in a portable heater into the hallway, he denies changing the temperature in the storage room, and he denies tampering with the dryer vent.

The Landlord confirmed that she does not have proof that it was this specific tenant who caused her to suffer an increase in hydro costs; that he was the one who plugged in the heater; or that he was the one who took her Christmas wreath. She said she could assume it was him because he was the only tenant who complained about not having heat in the hallway. She noted how the Tenant's friend who was a tenant in the unit across the hall had put furniture in the hallway in their attempts to change the space into a lobby. She informed the tenants that they could not have furniture in the hallway and that it was not to be used as a lobby.

I asked the Landlord why she chose to disconnect the heater rather than putting a lock box over the thermostat. She stated that she did not know that there was a way to lock out the thermostat. I then asked why she did not seek a remedy through dispute resolution back in December 2011 when the issues were going on. The Landlord confirmed she made a personal choice not to deal with the issue through dispute resolution at that time because she knew the tenancy would be ending on May 31, 2012 and she knew the temperature would be getting warmer.

Analysis

When a landlord makes a claim for damage or loss the burden of proof lies with the landlord to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Landlord's evidence confirmed the only event that was witnessed was the Tenant propping the laundry room door open and he remedied the situation when she requested that he close the door. There was no other evidence to support that the Tenant was the one who installed a portable heater or that he was the one who took her wreath. The Tenant admitted to setting the thermostat temperature to room temperature a couple of times however he argued that other tenants did the same prior to the Landlord disconnecting the heater in December 2011.

Upon consideration of the evidence before me I find the Landlord provided insufficient evidence to prove the increase in the common area hydro costs or the theft of her Christmas wreath were caused solely by the actions of this Tenant. I further find the Landlord did not take the proper steps to mitigate her loss as she made a personal choice not to seek a remedy through dispute resolution as she knew the tenancy was ending at the end of May 2012. Therefore, I dismiss the Landlord's claim, without leave to reapply.

The Landlord has not been successful with her application; therefore I decline to award her recovery of her filing fee.

Based on the foregoing the Landlord is not entitled to retain any amount of the Tenant's security and pet deposits and is hereby ordered to return the full deposit amount forthwith. There is evidence on file to indicate the Landlord has sent the Tenant a partial payment of \$881.07 on her cheque # 428, therefore the Tenant will be issued a monetary order for the balance owing of **\$742.93**.

Conclusion

The Landlord's application is hereby DISMISSED, without leave to reapply.

The Tenant has been issued a monetary order in the amount of **\$742.93**. In the event that the Landlord does not issue this payment to the Tenant, the Tenant would be at liberty to serve the Landlord the monetary order and have it enforced through Provincial Court.

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: August 24, 2012.

Residential Tenancy Branch