



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNR, FF

Introduction

This hearing was convened as a result of the tenant's successful application for review regarding the decision and monetary order issued against her on July 6, 2012, said decision and order being suspended by a Dispute Resolution Officer's (DRO) decision on a review application issued on July 20, 2012 pending the review hearing. The reviewing DRO ordered that the review be conducted by holding a new hearing.

The decision of July 6, 2012, awarded the landlord the amount of \$2322.50, directed the landlord to retain the tenant's security deposit of \$400.00 and the pet damage deposit of \$400.00 in partial satisfaction of the monetary award and granted the landlord a monetary order for the balance due in the amount of \$1522.50.

It is noteworthy that the landlord issued to the DRO unsolicited evidence following the hearing, stating that the landlord made an error at the hearing as to loss of revenue for the month of June 2012, stating the rental unit was rented during the month of June instead of July 1, 2012, as at the hearing. The landlord's evidence caused the original DRO to issue a correction of her original decision of July 6, 2012. The correction, dated July 10, 2012, awarded the landlord lost income of \$293.37 instead of an entire month.

I must note at this point that the original Decision of July 6, 2012, granted the landlord loss of income of \$1600.00 for the last two months of the fixed term tenancy, without stating the specific two months. The two months are presumably May and June 2012, as June 30, 2012, was the end of the one year fixed term. In the Correction of July 10, 2012, the original DRO stated that she awarded the landlord a full month of lost income for the month of July and accordingly adjusted the amount of lost income for July.

I therefore accept that the July 10, 2012 Correction was incorrect as to which month the alleged loss of income occurred.

The tenant applied for a review based upon her contention that she had new evidence not available at the time of the hearing, and based upon her contention that the decision of July 6, 2012 was obtained by fraud. The tenant's application was granted due to the reviewing DRO's finding that the tenant had new and relevant evidence not available at the time of the hearing and upon the appearance that the landlord's submissions gave the appearance of an intent to deceive.

The reviewing DRO also decided that a new hearing was to be conducted on the landlord's application for dispute resolution.

This new hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") for authority to retain the tenant's security deposit and pet damage deposit, a monetary order for unpaid rent and damage to the rental unit and for recovery of the filing fee.

The landlord named hereinabove stated that the male landlord named in the application was unable to attend the hearing due to travel plans. The appearing landlord is the spouse of the male landlord and stated that she understood the new hearing was to be conducted only upon the issue of lost income for June 2012.

I asked the landlord to direct me to the part of the reviewing DRO's decision of July 20, 2012, which would indicate that such a limited hearing on one issue was to occur and I note the response was an inability to so direct.

I explained that the hearing would be conducted in full on the original application. As the attending landlord had knowledge of this tenancy and dealings with this tenant, I proceeded on the merits of the application.

The hearing process was explained and the parties were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's relevant evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. 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 a monetary order, authority to retain the tenant's security deposit and pet damage deposit and to recover the filing fee?

Background and Evidence

The evidence shows that this one year, fixed term tenancy began on July 1, 2011, the tenancy agreement shows occupancy on June 28, 2011, monthly rent was \$800.00 and the tenant paid a security deposit and a pet damage deposit of \$400.00 each.

I heard undisputed testimony that this tenancy ended on April 24, 2012, when the tenant vacated the rental unit.

Although there is a disputed document entitled Security Deposit Report, the parties agree that there is no move-in or move-out condition inspection report as required by the Residential Tenancy Branch Regulations.

The parties also agree that the landlord retains the tenant's security deposit and pet damage deposit.

The landlord's monetary claim is as follows:

| | |
|------------------------------------|------------------|
| Cleaning | \$250.00 |
| Kitchen cabinet painting | \$100.00 |
| Damaged stove top | \$100.00 |
| Nail hole repair | \$150.00 |
| Heater, master bedroom | \$12.50 |
| Light fixture, towel bar labour | \$87.50 |
| Unpaid rent, April | \$400.00 |
| Loss of revenue, May and June 2012 | \$1600.00 |
| Total | \$2850.00 |

The landlord's testimony in support of their application:

Suite cleaning- The tenant left the rental unit in a state which required cleaning. The landlord's staff performed the cleaning; thus there were no specific receipts for the alleged loss.

Carpet cleaning-It was necessary to clean the carpets at the end of the tenancy. No receipts were provided.

Kitchen cabinets-The tenant damaged the cabinet, which required repainting; no receipts were provided. When questioned, the landlord speculated the cabinets were from the 1980's era.

Damaged stove top-The tenant damaged the stove during the tenancy, making the tenant responsible for any costs or diminished value.

Nail hole repair-The tenant left an excessive amount of nail or wall anchor holes, which necessitated the landlord making repairs. No receipts were provided.

Heater repair-The tenant moved the master bedroom's baseboard heater, which required that it be moved back and rewired when the tenant left.

Light fixture/towel bars-The tenant asked if she could put up her own towel bars and light fixtures, and when she left, she removed the replacements without leaving the originals.

Unpaid rent for April-The tenant paid only \$400.00 for the last month of her occupancy. The tenant said that she wanted to use her pet damage deposit for the balance, and although the landlord did not agree to use the pet damage deposit, they had no choice other than accept the partial rent payment and seek recovery of the balance.

Loss of revenue, May and June-The landlord is entitled to receive a loss of revenue for May in the amount of \$800.00 and a prorated loss of revenue for June. The landlord received \$625.00 from the new tenant, whose tenancy began in the rental unit on June 12, 2012. The amount the landlord claims for June is \$293.37.

When questioned, the landlord said the rental unit was immediately advertised in the 2 local newspapers as well as on their own website.

When questioned further, the landlord said they have a running advertisement and have had the advertisements running for 12 consecutive years on a continuing basis, as the landlord handles 94 units, with mixed units, furnished and unfurnished, 1 and 2 bedrooms, utilities included or not. The landlord agreed that this rental unit was not specifically advertised as it was included with all the available units.

The landlord's relevant evidence included a tenancy agreement, the security deposit report, the tenant's written forwarding address, dated April 30, 2012, email correspondence between the landlord and potential tenants following the end of this tenancy, and a significant number of photos.

Tenant's testimony in defence of the landlord's application:

Suite cleaning -The suite was cleaner than when she received it and she takes pride on having a clean living environment. She was shocked to hear the allegation that the rental unit was not clean as it was left in a proper condition.

Carpet cleaning-The tenant has her own steam cleaning machine as she likes to keep the carpets steam cleaned on a regular basis. The carpet had been steam cleaned at the end of the tenancy.

Kitchen cabinets-The male landlord was proud of the fact he saved money by using old materials and touching them up. The cabinets were not worth touching up as they were of poor quality and old.

Damaged stove top-The stove was left in the same condition as when she received it. The tenant said she did not use the stove as most meals were eaten out, or occasionally the microwave was used.

Nail hole repair-There were no excessive nail holes and that the wall anchors were standard sized wall anchors meant to be used for the preservation of drywall. The tenant is familiar with drywall repair and the holes were patched and sanded prior to leaving.

Heater repair-The respondent received permission from the male landlord to relocate the baseboard heater due to the arrangement of the tenant's personal property. The male landlord rewired the heater himself and as such, the tenant assumed there was no danger with the relocated heater.

Light fixture/towel bars-The tenant asked for and received permission from the male landlord if she could use her own light fixture and towel bars due to the poor quality of the existing fixtures. The old fixtures were left with the male landlord, as he removed them himself and presumably had them stored. She was never told they had to be replaced.

Unpaid rent for April-The tenant, the male landlord and the appearing landlord met at the rental unit and all three agreed that the pet damage deposit could be used for the balance of rent for April. In support, the tenant pointed to her copy of the cancelled cheque, which cleared the landlord's bank account, showing in the memo line April rent less the pet damage deposit.

Loss of revenue, May and June-The tenant gave her verbal notice to the landlords on March 23, 2012, that she was leaving by the end of April, which gave the landlord a sufficient amount of time to find a new tenant. The parties had such a friendly relationship, the landlord agreed to this and even agreed to buy her furniture so that the rental unit could be rented as a furnished suite.

The tenant further denied that the landlord's specifically advertised her rental unit, instead relying on their "standard defence" that they have a running advertisement.

The tenant's relevant evidence included the security deposit report, which she claimed was altered following the tenant's signature, the tenancy agreement, the cancelled cheque for April, a chronology of events, photos depicting the condition of the rental unit and witness statements attesting to the condition of the rental unit.

I note that the tenant raised an objection to the landlord's photographs, denying that some of the photos were from her rental unit and did not show the accuracy of the condition.

Analysis

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove, upon a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the alleged damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took all reasonable measures to mitigate their loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

*Suite cleaning, Carpet cleaning, Kitchen cabinets, Damaged stove top, Nail hole repair,- Heater repair, Light fixture/towel bars-*I find the landlord submitted insufficient evidence to establish that the tenant left the rental unit in a state which required cleaning or repair.

A key component in establishing a claim for cleaning and damage is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Residential Tenancy Act deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me I find the landlord failed to meet their obligation under the Act of conducting and completing the inspections and therefore there is no independent record of the condition of the rental unit at the start or at the end of the tenancy. I do not accept that the landlord's photographs adequately depict the state of the rental unit as there is no proof that all the photographs are of this rental unit as opposed to others of the landlord's 94 units and the photographs allegedly taken at the end of the tenancy are not of the same location or camera position as at the beginning of the tenancy.

Additionally, the landlord has failed to meet step 3 of their burden of proof as there were no receipts, invoices, staff time records and payments made.

Due to the landlord's insufficient evidence, I dismiss their entire claim for cleaning, repair or damage, without leave to reapply.

*Unpaid rent for April-*There is no dispute that the tenant paid \$400.00 of her monthly rent of \$800.00 for April. Although the tenant argued that she received permission from the landlord for this amount of payment, section 21 of the Act requires that the landlord's permission to apply the security deposit or pet damage deposit to rent must be in writing.

I therefore find the tenant submitted insufficient evidence that she had the landlord's written permission to apply the pet damage deposit to April's rent and find the landlord has established a monetary claim of \$400.00.

Loss of revenue, May and June- Under Section 45 (2) of the Residential Tenancy Act, among other requirements, a tenant may not end a fixed term earlier than the end of the fixed term, which in this case was June 30, 2012. Further, notices to end the tenancy must be in written form.

I find the tenant's verbal notice of her intent to vacate, disputed as to when it was received, to be insufficient notice as required under the Act. As the tenant vacated at the end of April, I find it reasonable that the landlord had an insufficient amount of time to arrange for a new tenant for the following month. I therefore find the landlord has established a monetary claim for loss of revenue for May in the amount of \$800.00.

As to the issue of loss of revenue for June, I find the landlord's evidence less compelling. The tenant has questioned the methods used by the landlord to minimize their loss and the landlord testified as to another version of events. When the competing parties offer differing verbal versions of events, I find the documentary evidence will be the determining factor.

In the case before, the landlord failed to submit proof of the nature and frequency of the advertising and therefore I was unable to examine the evidence to ensure that the landlord met their requirement to take reasonable measures to minimize their loss. Without such proof, I find the landlord submitted insufficient evidence of step 4 of their burden of proof and I dismiss their claim for loss of revenue for June 2012.

Even had I not dismissed the landlord's claim for loss of revenue based upon failure to submit proof of taking steps to minimize their loss, I would still make the decision to dismiss their claim based upon lack of documentary proof as to when the rental unit was re-rented and at what rate. I also find the tenant cast sufficient doubt as to the truthfulness of the landlord regarding this issue.

I also allow the landlord partial recovery of the filing fee to reflect their partial success with their application, in the amount of \$25.00.

Due to the above I find the landlord has established a total monetary claim of \$1225.00 for unpaid rent of \$400.00 for April, \$800.00 for May 2012 and a partial filing fee of \$25.00.

I next considered the issue of the tenant's security deposit and pet damage deposit.

When a landlord fails to properly complete a condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished. In this case, the landlord applied to keep the security deposit in partial compensation of monetary claims for damage to the property as well as for unpaid rent, and potential lost revenue for May and June 2012. As the landlord's claim was not only for damage to the property, I find that the landlord complied with the requirement under section 38 to make an application to keep the deposit.

As to the pet damage deposit, however, Section 38 requires that the landlord's claim against that deposit must be for alleged damages caused by the tenant's pet and must be made within 15 days after the end of the tenancy and receiving the tenant's written forwarding address. The failure to comply with this provision results in the doubling of the tenant's pet damage deposit.

In this case before me, I find the landlord did not make an application for damage caused by the tenant's pet as the alleged damage was for nail holes, stove damage, heater relocation, kitchen cabinet repainting, and towel and light fixture replacement. Carpet and cleaning are tenant requirements under the Act and are not considered damage.

Because the landlord's claim was not for alleged damage by the tenant's pet and they failed to return the tenant's pet damage deposit within 15 days of having received the tenant's written forwarding address, section 38 of the Act requires that the landlord pay the tenant double the amount of her pet damage deposit of \$400.00.

I therefore find the tenant is entitled to a monetary award of \$800.00.

Conclusion

I find the landlord has established a monetary claim of \$1225.00. I direct the landlord to retain the tenant's security deposit of \$400.00 in partial satisfaction of their monetary claim, leaving a balance owed to the landlord of \$825.00.

I find the tenant is entitled to a return of her pet damage deposit of \$400.00, doubled, for a total amount of \$800.00.

From the landlord's balance of their monetary award of \$825.00, I have deducted the amount of the tenant's monetary award of \$800.00, and find that the landlord is entitled to a monetary order of \$25.00.

I have enclosed the landlord's monetary order of \$25.00 with the landlord's decision.

The order must be served upon the tenant and is enforceable in the Provincial Court of British Columbia (Small Claims).

I order that the original and any related Decision and Order of July 6, 2012 pertaining to the landlord's application, are hereby set aside and are of no force or effect.

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 27, 2012.

Residential Tenancy Branch