



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNR, MNDC, MNSD, FF
Tenant: MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a loss of rental income, for compensation for cleaning and repair expenses, to recover the filing fee for this proceeding and to keep the Tenant's security deposit and pet damage deposit in partial payment of those amounts. The Tenant applied for the return of a security deposit and pet damage deposit plus compensation equal to the amount of those deposits due to the Landlord's alleged failure to return them as required by the Act as well as to recover the filing fee for this proceeding.

At the beginning of the hearing the Tenant claimed that he had not received the Landlord's documentary evidence package. The Landlord provided a registered mail receipt showing that the documents were sent to the Tenant on August 8, 2012 at his address for service. The Tenant admitted that he received the Landlord's hearing package which was delivered in the same manner. Section 90(a) of the Act says a document delivered by mail is deemed to be received by the recipient 5 days later (even if they refuse to pick up the mail). Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's evidence package as required by s. 88 of the Act.

Issue(s) to be Decided

1. Is the Landlord entitled to compensation for a loss of rental income and if so, how much?
2. Is the Landlord entitled to compensation for cleaning and repair expenses and if so, how much?
3. Is the Tenant entitled to the return of a security deposit and pet damage deposit and if so, how much?

Background and Evidence

This fixed term tenancy started on February 28, 2012 and was to expire on September 30, 2012 however it ended on June 20, 2012 when the Tenant moved out. Rent was

\$1,025.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$512.50 and a pet damage deposit of \$512.50 at the beginning of the tenancy.

The Tenant claimed that on June 4, 2012, he found a Notice of Entry posted on his door for the following day. The Notice stated that the Landlord would be showing his suite to a prospective tenant for the end of his fixed term tenancy. The Tenant said he was surprised to see the Notice given that the addendum of his tenancy agreement contained a term that a new lease could be negotiated at the end of the fixed term "depending on the situation." The Tenant said the Landlord's agent showed up a few minutes late for the showing so he denied her entry and she posted another Notice. The Parties agree that around this time, the Tenant advised the Landlord's agents that he was not happy with the rental unit and with the Landlord in general, that he would be moving out and would let them know when.

On June 10, 2012, one of the Landlord's agents (M.J.) sent the Tenant an e-mail in which she stated,

"this e-mail is to confirm that your offer to relocate prior to the expiry of you lease [at the rental property] has been accepted. Should you find a new place please let me know and we will agree on a date to vacate the premises. At this point, we will need to sign a 'Mutual Agreement to End a Tenancy.' The move out procedure will be the same."

The Landlord's agents said they were trying to work with the Tenant to find someone to move into the rental unit. The Tenant claimed that he advised the Landlord's agents that he had a prospective tenant for July 1st but that he later was advised by the prospective tenant that they had contacted the Landlord but got no cooperation so they decided to go elsewhere. The Landlord's agents denied this and claim that they contacted the Tenant a number of times to get contact information for his prospective tenant but that no one contacted them. The Parties agree that the Tenant moved out on June 20, 2012 and advised the Landlord's agent that he had done so later that day. The Parties scheduled a move out inspection for June 22, 2012.

The Landlord's agents argued that they did not agree that the Tenant could end the tenancy early and that it was frustrating working with the Tenant because he never advised them when he intended to move out. The Landlord's agents said they began advertising the rental unit on Craigslist as of June 21, 2012 but were unable to find a new tenant to rent the unit until August 1, 2012. The Tenant argued that the Landlord agreed that he could end the tenancy early and claimed that as of the date he vacated, the Landlord had a "no vacancy" sign still posted on the rental property.

The Parties completed a condition inspection report at the beginning of the tenancy and at the end of the tenancy. The Landlord's agent said the move out condition inspection was conducted quickly because she felt the tenant was hostile and did not want to

prolong it. The Landlord's agent claimed that the bathtub had to be cleaned and kitchen cupboards had a lot of wear and they as well as some walls with nail holes had to be repaired and painted at the end of the tenancy. The Tenant argued that the move out condition inspection report showed that everything was in satisfactory condition and that the wear on the kitchen cupboards was an issue at the beginning of the tenancy.

The Landlord's agents also claim that the Tenant did not return keys to the front door and laundry room at the end of the tenancy which the Tenant denied. The Landlord's agents noted that the condition inspection report shows the Tenant was given 2 suite keys and 1 laundry room key at the beginning of the tenancy but returned only 1 suite key and 2 keys of unknown origin at the end of the tenancy. The Landlord's agents argued that it was necessary to change the locks because the Tenant has a criminal record for real estate fraud.

The Parties agree that the Tenant did not provide the Landlord with his forwarding address in writing. The Tenant claimed that the address for service on his application for dispute resolution is his forwarding address.

Analysis

Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that he incurs as a result. Section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income.

I find that the Landlord's agents agreed that the Tenant could end the fixed term tenancy early ***provided only*** that they came to an agreement on a date and then signed a Mutual Agreement to end tenancy. I find that the Parties did not come to a mutual agreement on when the tenancy would end. Instead, I find that the Tenant vacated the rental unit on June 20, 2012 with no prior notice to the Landlord. As a result, I find that the Tenant is liable for a loss of rental income subject to the Landlord showing that ***its agents*** took reasonable steps to re-rent the rental unit.

The Landlord's agent, J.H., said he posted an advertisement on Craigslist on June 21, 2012 but provided no copies of the advertisements as evidence at the hearing. The Tenant did not dispute this but argued that the Landlord did not take reasonable steps to re-rent the rental unit for July 2012 because he referred potential tenants to the Landlord's agents who allegedly did not cooperate with them. I find it irrelevant if the Landlord had a "no vacancy" sign on the property as of June 20, 2012 given that the Tenant had not yet give notice of when he would be ending his tenancy. I find on a balance of probabilities that the Landlord's agents did try to re-rent the rental unit as of

June 21, 2012 but given the shortness in notice, the unit could not be re-rented for July, 2012. Consequently, I find that the Landlord is entitled to compensation for lost rental income for July 2012 in the amount of \$1,025.00.

Section 21 of the Regulations to the Act says that *“a condition inspection report completed in accordance with the Act is evidence of the state of repair and condition of the rental unit on the date of the inspection unless either the landlord or the tenant has a preponderance of evidence to the contrary.”* Although the Landlord’s agent argued that the move out condition inspection report was completed hastily because she felt the Tenant was hostile, I find that this does not amount to “a preponderance of evidence” necessary to displace the condition inspection report.

As the condition inspection report does not show any damage to walls or cupboards during the tenancy, I find that the Landlord is not entitled to recover expenses for repairs. Furthermore, the condition inspection report only notes “tub not cleaned.” The Landlord sought \$112.00 for cleaning expenses however the invoice upon which it relies in support of this expenses states only *“cleaning invoice + paint and repair.”* In the absence of any particulars on the invoice, I find that there is insufficient evidence as to what if any cleaning expenses the Landlord incurred to clean the bath tub and as a result, I dismiss the Landlord’s application for cleaning and repair expenses without leave to reapply.

Section 37 of the Act says that at the end of a tenancy, a Tenant must return all keys that give access to the rental unit (and rental property). Based on the move out condition inspection report, I find that the Tenant did not return all of his keys at the end of the tenancy and that as a result, the Landlord reasonably incurred expenses to change the locks in the amount of \$148.69. Consequently, I find that the Landlord is entitled to a total monetary award of \$1,173.69.

Section 38(6) of the Act says that if a Landlord does not return a Tenant’s security deposit or pet damage deposit or file an application for dispute resolution to make a claim against them within 15 days of the end of the tenancy or the date the Landlord receives the Tenant’s forwarding address in writing (whichever is later), then the Landlord must return double the amount of the security deposit and pet damage deposit. I find that the Tenant did not give the Landlord his forwarding address in writing and note that the address on his application for Dispute Resolution ***is not*** a forwarding address for the purposes of s. 38 but rather an address for service of documents. Consequently, I find that the Tenant is entitled only to the original amount of the security deposit and pet damage deposit in the total amount of \$1,025.00.

I Order pursuant to s. 38(4) and s. 72(2) of the Act that the Parties’ respective monetary awards be offset with the result that the Landlord will receive a Monetary Order for the balance owing of \$148.69. As the Parties’ respective claims to recover the filing fee for this proceeding would also be offsetting, I make no award of them and dismiss that part of their respective applications without leave to reapply.

Conclusion

A Monetary Order in the amount of \$148.69 has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that 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: September 11, 2012.

Residential Tenancy Branch