



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: MNSD, MNDC, FF
For the landlord: MNSD, MND, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The landlord applied for authority to retain the tenant's security deposit, a monetary order for damage to the rental unit and for recovery of the filing fee.

The tenant applied for a monetary order for a return of his security deposit, a monetary order for money owed or compensation for damage or loss 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, 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 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 referred to in this decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit, for authority to retain the tenant's security deposit and to recover the filing fee?

Is the tenant entitled to a return of his security deposit, a monetary order and to recover the filing fee?

Background and Evidence

A written tenancy agreement was not submitted into evidence; however, I heard undisputed testimony that this tenancy began on August 1, 2009, ended on June 30, 2012, ending monthly rent was \$1040.00, and the tenant paid a security deposit of \$500.00 at the beginning of the tenancy.

The rental unit was a three room basement suite.

Landlord's claim and evidence-The landlord's monetary claim is \$2000.00, which includes \$1860.00 for painting the rental unit and \$140.00 for cleaning the rental unit.

In support, the landlord said that when the tenant vacated the rental unit, there were marks, writing and drawings on the walls of the rental unit, which was notated on the move out condition inspection report. The landlord stated that the markings appeared to have been left by the tenant's children.

The landlord stated that it was not possible to clean the drawings and marks and that the only solution was for the rental unit to be completely repainted. In support of this argument, the landlord referred to her photographic evidence and the statement of the painting contractor. I note that the painting contractor appeared at the hearing and was excused from the hearing until time for his testimony. Due to the length of the hearing, I accepted the previously submitted statement as the oral testimony the contractor would provide.

The tenant was given an opportunity to request an adjournment in order to question the painting contractor, but the tenant declined.

When questioned, the landlord said that the paint in the rental unit was approximately three years old.

The landlord also said that the floors of the rental unit were so unclean, a bleach solution was required to remove the dirt. The landlord estimated that 4 hours of cleaning were required to clean the rental unit.

Tenant's response-The tenant denied that the marks on the wall were damage; rather they were normal wear and tear after a three year tenancy. The tenant referred to the condition inspection report, on which he wrote that he disagreed with the landlord's assessment of the condition of the rental unit at the end of the tenancy.

The tenant also referred to his extensive photographic evidence, and further stated that the landlord's photographs were unclear and showed just a very small area of one wall, which was not representative of the condition of the majority of the walls. The tenant also stated that he could not confirm from the photographic evidence to which wall the photos showed.

Tenant's claim and evidence-The tenant's monetary claim is in the amount of \$5000.00, comprised of his security deposit of \$500.00, doubled, \$3900.00 and the filing fee of \$100.00.

The tenant was questioned as to the basis of his claim for \$3900.00, with the tenant responding that the landlord failed to maintain the rental unit in a reasonably safe, healthy condition.

The tenant said that there were several serious issues throughout the tenancy, including a washing machine malfunction, pipe and flooding issues, mould, wasp's nests and renovation materials being left on the premises.

The tenant also alleged that he developed tumor as a result of the condition of the rental unit.

When questioned, the tenant said that he called the landlord during the tenancy to deal with the issues. The tenant acknowledged that when he called about the washing machine, the landlord did respond. However, the other issues were not addressed.

As to the security deposit, the tenant said that he gave the landlord his forwarding address in a text message on July 7, 2012; however, to date, the landlord has not returned his security deposit.

The tenant also sent the landlord a letter on July 23, 2012, via facsimile, with another request for a return of his security deposit.

Landlord's response-The landlord agreed that she received the tenant's text message on July 7, 2012, containing the forwarding address. The landlord said she also received the tenant's forwarding address in the July 23, 2012, fax.

I asked the landlord specifically if she knew of the tenant's forwarding address on July 7, 2012, and the landlord said, "Yes."

The landlord denied ever neglecting to address any of the tenant's concerns throughout the tenancy and that each complaint was dealt with promptly.

The landlord said that the rental unit was in a safe and clean condition, as it was newly renovated prior to the tenant moving in.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, both the landlord and tenant in this case, has to prove, with a balance of probabilities, 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, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

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

Landlord's application-

As to the landlord's claim for repainting the rental unit, Residential Tenancy Branch Policy Guideline 40 provides a table for the useful life of Building Elements. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item. Interior paint has a useful life of 4 years and as the paint was three years old, the paint had remaining a useful life of 1 year, or $\frac{1}{4}$ of the total repainting costs. In this case, $\frac{1}{4}$ of the painting invoice total of \$1800.00 is \$450.00.

I do not accept that the markings and drawings left on the wall by the tenant to be reasonable wear and tear and the tenant acknowledged that some were left in a small area.

However, prior to awarding the landlord monetary compensation for repainting of $\frac{1}{4}$ of the costs expended, a review of the landlord's evidence did not convince me that the entire rental unit required repainting. I found the landlord's photographic to be unclear as to the severity of the markings and the location of such markings. I was also influenced by the tenant's photographic evidence which showed the walls to be in, for the most part, an undamaged condition.

I was also influenced by the landlord's delay in repainting the rental unit, as the repainting did not occur until sometime after the landlord filed his application for dispute resolution and at least a month and half after the tenancy ended.

I find the landlord is entitled to some compensation for the markings and that a reasonable amount considering the landlord's unclear evidence is \$350.00.

As to the landlord's claim for cleaning the rental unit, I found the tenant's photographic evidence to show that the rental unit was left in a reasonably clean state after the three year tenancy ended and I therefore dismiss his claim for cleaning in the amount of \$140.00.

Tenant's application-

As to the tenant's claim for his security deposit, under section 38 of the Act, at the end of a tenancy a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. If a

landlord fails to comply, then the landlord must pay the tenant double the security deposit.

In the case before me, the undisputed evidence is that the tenant communicated his forwarding address in a text transmission on July 7, 2012. The landlord agreed that she received the text on that date and that she knew the tenant's forwarding address on that date. I accept that this method of communication was the preferred method of communication between the parties after the tenancy ended, as demonstrated by the oral and written evidence.

Although the Act does not recognize text transmission as an acceptable method of delivery of documents, I order that the delivery of the tenant's forwarding address through the July 7, 2012 text to the landlord, with the landlord's confirmation, sufficiently served, pursuant to section 71 of the Act.

As the tenancy ended on June 30, 2012 and as I have found that the landlord had received the tenant's written forwarding address on July 7, 2012, the landlord had 15 days from that date to file an application for dispute resolution claiming against the security deposit or return the tenant's security deposit. As the landlord failed to file his application until August 1, 2012 and did not return the tenant's security deposit, I find the tenant has established an entitlement to recovery of his security deposit of \$500.00, doubled, for a total monetary claim of \$1000.00.

As to the tenant's monetary claim for \$3900.00, I find the tenant submitted insufficient evidence that the landlord failed to provide an unhealthy or unsuitable rental unit during the course of the tenancy, which was detrimental to their mental or physical health. The tenant failed to provide proof that his tumor was a result of any actions or neglect of the tenant and there was no evidence that the landlord was ever put on notice of the alleged unsuitable condition of the rental unit.

Additionally, I did not find that the tenant provided credible testimony when said that he lived with the alleged condition for three years without notifying the landlord or seeking dispute resolution for the same. I therefore find the tenant failed to prove step 4 in his burden of proof and I dismiss his claim for \$3900.00, without leave to reapply.

Conclusion

I find that both applications had merit and I therefore do not award either party recovery of the filing fee as they are offset against each other.

I find the landlord is entitled to a monetary award of \$350.00 for damage to the walls.

I find tenant is entitled to a monetary award of \$1000.00, comprised of his security deposit of \$500.00, doubled.

I have offset the landlord's monetary award against the tenant's monetary award and I therefore grant the tenant a final, legally binding monetary order for the difference in the amount of \$650.00, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement 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* and is being mailed to both the applicant and the respondent.

Dated: October 16, 2012.

Residential Tenancy Branch