



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNSD, MNDC, RR, AAT

For the landlord: MNSD, OPR, OPB, MNR, MNDC, 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 tenant applied for a monetary order for money owed or compensation for damage or loss, a return of his security deposit, for an order allowing a reduction in rent and an order requiring the landlord to allow access to the rental unit.

The landlord applied for authority to retain the tenant's security deposit, a monetary order for unpaid rent, damage to the rental unit and for money owed or compensation for damage or loss, an order of possession due to unpaid rent and a breach of an agreement with the landlord 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 denied receiving the other's evidence. However, after much questioning, I determined that each party had either received the evidence or refused the evidence, and I allowed each party's evidence.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary Issue-The tenant has now vacated the rental unit and as a result it was no longer necessary to consider issues pertaining to each of the parties' request for relief for a continuing tenancy. I therefore excluded the landlord's request seeking an order of possession and the tenant's request seeking access to the rental unit and a reduction in rent.

Issue(s) to be Decided

1. Is the tenant entitled to a monetary order for money owed or compensation for damage or loss and a return of his security deposit?

2. Is the landlord entitled to a monetary order for money owed or compensation for damage or loss and unpaid rent, for authority to retain the tenant's security deposit, and to recover the filing fee?

Background and Evidence

I heard testimony that this tenancy either started or was to start on July 1, 2012, monthly rent was \$600.00 and the tenant paid a security deposit of \$300.00 in June 2012.

The parties disagree on the date the tenant moved into the rental unit.

Tenant's Application

The tenant has applied for a monetary order for \$2065.00. This includes a loss of his and his children's personal possessions due to the flooding or water on the floor.

The tenant's relevant testimony included:

The tenant said that he was unable to move into the rental unit due to the flood caused by rain and that the landlord had not made the rental unit suitable for occupation during the entire tenancy. The tenant said that he was able to use only 1 bedroom of the 3 bedroom basement suite during the tenancy.

The tenant submitted that the landlord would not make proper repairs to the rental unit and that most of his and his children's personal property was ruined as they were forced to put them on the floor, which became damaged by water.

The tenant agreed that he did not pay rent in September because the landlord refused to make the repairs and believed he was entitled to a reduction in rent.

When questioned, the tenant confirmed that he did not have renter's insurance.

The tenant's relevant evidence included photos from the rental unit, a written submission and witness' letters.

Landlord's response:

The landlord said that when he attended the rental unit, he did not see the items for which the tenant is claiming. Additionally, the landlord said that he was not home when the tenant first complained of the water in the basement suite (the landlord lived in the upper suite), but that when he did return, he attended and cleaned the water.

Landlord's Application:

The landlord's monetary claim is for \$1100.00.

The landlord's relevant testimony included:

The landlord was not specific as to how he arrived at this claim, but stated that the tenant did not pay rent for September of \$600.00 and \$100.00 for July 2012. The landlord also said he is entitled to half a month of rent for October 2012, cleaning for \$48.00, garbage hauling for \$50.00 and damage to the outside of the home for \$35.00.

The landlord said that the tenant did not pay rent for September, moved out on October 3, 2012, and that he secured a new tenant who moved into the rental unit on October 12, 2012.

Analysis

Based on the relevant oral and documentary 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 parties 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.

Tenant's application:

Section 32 of the Act provides that a landlord must provide and maintain a residential property so that it complies with health, safety and housing standards required by law.

As to the tenant's claim that he was not able to move into the rental unit on July 1, 2012, as agreed upon, I accept that the rental unit lacked a window on the first date of the tenancy and that there was water on the floor due to a rain. I accept that the tenant accordingly was denied full use and possession of the rental unit for at least one week of the tenancy and that the tenant is entitled to compensation for that portion of his July rent. **I therefore find the tenant has established a monetary claim of \$138.04** (monthly rent of \$600.00 x 12 months = \$7200.00 yearly rent ÷ 366 days in 2012 = \$19.72 daily rate; \$19.72 x 7 days, July 1-7, = \$138.04).

As to the tenant's claim for a loss of his personal property, where a rental unit is damaged by an unforeseen event, such as fire or flooding, it is upon the landlord to repair the rental unit and residential property. Tenant's insurance generally covers damages or loss a tenant may incur as a result of an unforeseen event such as fire or flood. Damage to a tenant's property or other losses, other than the loss of use of the rental unit, are not the responsibility of the landlord unless the landlord has been negligent in the duty owed to the tenant.

Due to this the tenant must prove that the flood was a result of the landlord's negligence. Negligence is the failure to exercise the degree of care considered reasonable under the circumstances, resulting in an unintended injury to another party.

Having considered the submissions of both parties, I find that the flooding in the basement unit was the result of a heavy rain and that this was beyond the control of the landlord.

I therefore find the tenant has not proven negligence on the part of the landlord and the tenant is not entitled to compensation for damaged possessions.

Landlord's Application:

Unpaid rent for September and October 2012- Under section 26 of the Act a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find the tenant failed to demonstrate that he had a legal right to withhold rent and was therefore obligated to pay rent for September of \$600.00. I therefore find the landlord has proven a monetary claim of \$600.00.

Unpaid rent for October 2012- I find the tenant owed rent on October 1, 2012, as he still was in possession of the rental unit on that date when rent was due. However, the landlord did take steps to mitigate his loss by advertising the rental unit and secured another tenant who moved in on October 12, 2012.

I therefore find the tenant was responsible for the landlord's loss of rent from October 1-11, 2012. As a result I find the landlord has established a monetary claim of \$216.92 (monthly rent of \$600.00 x 12 months = \$7200.00 yearly rent ÷ 366 days in 2012 = \$19.72 daily rate; \$19.72 x 11 days, October 1-11, = \$216.92).

Unpaid rent for July 2012 – I find the landlord submitted insufficient evidence that the tenant failed to pay all of the rent owed for July and I therefore dismiss his monetary claim for \$100.00.

Damages- I find the landlord submitted insufficient evidence of a loss for any of the damage or cleaning that he alleged and I therefore dismiss his claim for remaining losses.

I allow the landlord to recover the filing fee of \$50.00.

Conclusion

I find the tenant has proven a monetary claim of \$138.04, for loss of use of the rental unit for July 2012.

I find the landlord has proven a monetary claim of \$866.92, for \$600.00 unpaid rent for September, \$216.92 for prorated loss of rent for October and the filing fee of \$50.00.

From the landlord's monetary award of \$866.92, I offset the tenant's monetary award of \$138.04 and the tenant's security deposit of \$300.00, and I grant the landlord a final, legally binding monetary order for the balance due in the amount of **\$428.88** which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord 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 19, 2012.

Residential Tenancy Branch