



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the Landlord for a monetary order for damages to the rental unit, site or property; for money owed or compensation under the Act or tenancy agreement; for unpaid rent or utilities; to keep all or a portion of the security deposit; and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

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 facts and issues in this decision.

Preliminary Matter

The parties were involved in one prior hearing, in which the Tenant was awarded double the security deposit in her Application. Since the security deposit was dealt with in the prior decision, I have no authority to make any further decisions regarding the security deposit, and this portion of the Landlord's claim is dismissed.

Issues(s) to be Decided

Did the Tenant breach the term lease, entitling the Landlord to monetary compensation?

Did the Tenant fail to pay utilities?

Did the Tenant damage the property?

Background and Evidence

On or about July 8, 2011, the Landlord and the Tenant signed an agreement for a fixed term of one year, starting on August 1, 2011, and ending on July 31, 2012 (the "Tenancy Agreement").

The monthly rent was \$1,495.00, and the Tenant paid a security deposit and a pet damage deposit to the Landlord. An addendum to the Tenancy Agreement was completed as well. One of the clauses in the addendum required the Tenant to pay for usage of electricity in the rental unit and for a portion of the electricity for the heated floors. The addendum sets out how the Landlord will bill the Tenant for electricity.

The Landlord testified that in January or March of 2012, the Tenant began requesting that the Landlord let her out of the fixed term agreement.

The Landlord testified that sometimes he lives in the United States and sometimes at the rental unit. He testified that he told the Tenant she could show the rental unit while he was away and try to find replacement renters. He testified that he informed the Tenant she would be responsible under the lease until he found new renters, or that she could bring forward potential renters to him. The Landlord testified that the Tenant referred some people to him, however, these people either did not want the unit or they wanted to pay a rate of rent far less than what the Tenant was paying.

The Landlord began advertising the rental unit at the full rental amount paid by the Tenant. The Landlord then reduced the rent by \$50.00 per month. The Landlord was successful in re-renting the unit for May of 2012. Due to the reduction in rent, the Landlord claims \$50.00 a month in rent loss for May, June and July of 2012, a total of \$150.00.

The parties signed a mutual agreement to end the tenancy effective on April 27, 2012, and the Tenant vacated at this time.

The Landlord also claims for just over two months of unpaid electrical bills. The Landlord claims that the Tenant did not pay \$22.60 as a balance owed for February 2012, and did not pay any amounts for March or April of 2012. The Landlord claims \$107.56 for March and \$76.49 for April.

The Landlord had been billing the Tenant approximately every month. He would perform the calculations and email the Tenant with her amount to pay. The Landlord testified that the Tenant paid the electrical bills regularly until February of 2012, when

she began complaining to him that the bills were too high. The Landlord told the Tenant she could check the meter and sub meter for electrical service, but that the usage would be higher in winter, according to past bills. According to the Landlord, when he did his calculations he was only charging the Tenant 75% and not the 80% allowed under the addendum to the Tenancy Agreement.

The Landlord also testified that about the same time the Tenant withheld the utility payment, she began to withhold funds from rent. According to the Landlord, the Tenant apparently told the Landlord she would withhold money and pay him only \$1,350.00 a month because that was all she could afford. The Landlord had to give the Tenant a 10 day Notice to End Tenancy for unpaid rent.

The Landlord also claims against the Tenant for damage to the garden on the property. The Tenant had access to a fenced garden for her use and that of her dog. According to the Landlord the Tenant requested to put down bark mulch for her dog under a tree. The Landlord testified that the Tenant then cut down branches from the bush and shrubs and pulled out perennial plants in order to make more room for her dog. The Landlord testified that the bushes, shrub and plants did not regenerate. The Landlord claims for \$100.00 for this loss.

In reply to the Landlord's claims, the Tenant testified she began asking the Landlord to be released from the Tenancy Agreement in December of 2011. The Tenant testified that she informed the Landlord in January of 2012 that she had to break the lease as she could no longer afford the rent and electricity.

The Tenant testified she spoke with some friends about her hydro bill and she felt these were too high. The Tenant stated she did not get copies of the bills from the Landlord.

The Tenant testified that before she did anything to the garden, she asked the Landlord if she could trim back the weeds around an approximate two meter space. The Tenant testified that the Landlord gave her permission to cut and weed. The Tenant testified that when the Landlord returned he was upset because she trimmed a laurel bush which was concealing a pipe. The Tenant testified that they had a discussion about the trimming and had thought they reached an indefinite agreement to discuss this when she was leaving the rental unit. The Tenant testified she felt it was just forgotten until the end of the tenancy.

In reply, the Landlord testified he gave the Tenant all the hydro bills by putting them in her mailbox or by sending an email. He testified that the bills only come every two

months, but he gave these copies. He further testified he showed her the hydro bills for the previous renter in the unit.

The Landlord agreed that the issue of the garden was left unclear and the parties had agreed to deal with this when the Tenant moved out.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Tenant breached the Tenancy Agreement and the Act, without authority to do so.

The Tenancy Agreement is a binding legal contract which both parties must abide by.

In British Columbia a tenancy may only end if done so in accordance with the Act.

Under section 45(3) of the Act the Tenant could not end the tenancy earlier than the fixed term date of July 31, 2012, unless there was some authority under the Act for her to do so. For example, if the Tenant felt the Landlord was in breach of a material term of the tenancy agreement, she could have written to the Landlord with a request to correct the breach and provide a reasonable time to do so. If the Landlord did not correct the problem within that time, then the Tenant might have ended the tenancy by giving notice earlier than the end of the fixed term. Here the Tenant had no such authority under the Act to end the tenancy.

Therefore, as the Tenant breached the Tenancy Agreement and the Act by ending the tenancy without authority to do so, I find the Landlord is entitled to compensation for loss of rent.

The Landlord mitigated the loss, as required by the Act, and had new tenants move into the rental unit in May of 2012. The Landlord had to lower the rent to attract the other renters and I find the Landlord is entitled to the lost rent due to the Tenant's breach, of \$50.00 per month for the three months that remained in the Tenancy Agreement, for a total of **\$150.00**.

I also find the Tenant failed to pay the electrical bills as required under the addendum to the Tenancy Agreement. The evidence indicates that the arrangement of the payment of utilities appeared to work well, up until the bills started to increase during the winter, and then the Tenant began refusing to pay. I find the Tenant had insufficient evidence that the Landlord tried to overbill her or did not abide by the addendum or Tenancy

Agreement in billing her. Therefore, I find the Landlord has established a claim for **\$206.65** for hydro bills.

Lastly, I dismiss the claims of the Landlord in regard to the garden. I find the Landlord had insufficient evidence to prove the value of the damaged flowers or other alleged damages.

Therefore, I find that the Landlord has established a total monetary claim of **\$406.65**, comprised of the above described amounts and the \$50.00 fee paid by the Landlord for this application.

I grant the Landlord an order under section 67 for the balance due of **\$406.65**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord has established claims for loss of a portion of rent due to the breach of the fixed term Tenancy Agreement by the Tenant, and for hydro the Tenant failed to pay to the Landlord under the addendum. The Landlord's claims for garden damage are dismissed due to insufficient evidence.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: November 14, 2012.

Residential Tenancy Branch