



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MNSD, FF

Introduction

On August 15, 2012 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

The Landlord submitted copies of a tenancy agreement, two receipts, and a letter dated May 11, 2012, copies of which were served to the Tenant. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Landlord submitted copies of a condition inspection report, a security deposit refund statement, and a letter dated June 14, 2012. The female Agent for the Landlord stated that these documents were mailed to the Tenant with the aforementioned documents, however the Tenant stated they were not received. The female Agent for the Landlord was given the opportunity to testify regarding the content of these documents and to request an adjournment if viewing the documents was necessary. I am satisfied that viewing these documents was not necessary in these circumstances.

Issue(s) to be Decided

Is the Landlord is entitled to compensation for unpaid rent; for compensation for damage to the rental unit/residential property; to retain all or part of the security deposit; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that the tenancy began on June 15, 2011; that the Tenant was required to pay rent of \$825.00 by the first day of each month; and that the Tenant paid a security deposit of \$412.50.

The Landlord and the Tenant agree that the Landlord provided the Tenant with a letter, dated May 11, 2012, in which the Landlord informed the Tenant that rental unit must be vacated by May 30, 2012 in order to "avoid charges being laid with the Langley RCMP". The Tenant stated that she interpreted this letter to be a one month notice to end tenancy and she assumed it served to end the tenancy on June 11, 2012.

The female Agent for the Landlord stated that the Tenant vacated the rental unit on June 14, 2012. The Tenant stated that she had most of her property moved out of the rental unit by June 03, 2012; that she returned to the rental unit on June 13, 2012 to retrieve the remainder of her property and she learned that the locks had been changed; that the female Agent for the Landlord provided access to the rental unit on June 14, 2012 so she could remove the remainder of her property; and that she returned the keys to the unit on June 14, 2012.

The female Agent for the Landlord stated that she did not provide the Tenant with access to the rental unit at any time in June of 2012. The male Agent for the Landlord stated that the locks to the rental unit were not changed until June 15, 2012.

The Landlord and the Tenant agree that a condition inspection report was completed at the start of the tenancy. The female Agent for the Landlord stated that a condition inspection report was completed, in the presence of the Tenant, on June 14, 2012, although the Tenant refused to sign the report. The Tenant stated that a condition inspection report was not completed in her presence at the end of the tenancy.

The Landlord and the Tenant agree that the Tenant did not authorize the Landlord to retain any portion of the security deposit; that the Landlord did not return any portion of the security deposit; and that the Tenant provided the Landlord with her forwarding address, in writing, on June 14, 2012.

The Landlord is seeking compensation for rent from June of 2012, in the amount of \$412.50. The Landlord and the Tenant agree that rent has not been paid for June.

The Landlord is seeking compensation, in the amount of \$25.00, for the cost of replacing keys. The female Agent for the Landlord stated that the Tenant was provided with a set of keys at the start of the tenancy and with a second set of keys when her boyfriend moved into the rental unit. She stated that only one set of keys was returned at the end of the tenancy. The Tenant stated that the Tenant was only provided with one set of keys. The Landlord did not submit a receipt that shows this expense was incurred.

The Landlord is seeking compensation, in the amount of \$60.00, for the cost of cleaning the blinds, which the female Agent for the Landlord stated required cleaning at the end of the tenancy. The Tenant acknowledged that the drapes required cleaning at the end of the tenancy. The female Agent for the Landlord stated that employees of the Landlord spent approximately two hours removing/cleaning/hanging the drapes.

The Landlord is seeking compensation, in the amount of \$120.00, for the cost of cleaning the carpet, which the male Agent for the Landlord stated required cleaning at the end of the tenancy. The Tenant stated that she shampooed the carpet at the end of the tenancy and that they were left in clean condition. The male Agent for the Landlord stated he spent approximately four hours cleaning the carpets.

The Landlord is seeking compensation, in the amount of \$761.45, for repairing a vending machine. The Landlord submitted receipts that shows the machine cost \$403.20 to repair.

The female Agent for the Landlord stated that the Landlord has surveillance video that shows a male breaking into the vending machine at the residential complex; surveillance video of the same male in the company of both the Tenant and the Tenant's boyfriend on several occasions prior to the incident; surveillance video of the same male in the company of the Tenant's boyfriend a few hours after the theft; and surveillance video of the same male being "buzzed" into the residential complex by an unknown party shortly before the theft. The female Agent for the Landlord stated that the incident was reported to the police; that the Tenant's boyfriend provided the name of the male he was seen with; and police have not laid charges in the matter. The Landlord has not submitted copies of the video surveillance.

The Tenant stated that the male who allegedly broke into the video machine was a guest in the rental unit on one occasion prior to the theft; that he was not a guest in her rental unit on the day of the theft; and that the surveillance video is not of sufficient quality to determine that the thief was the same person her boyfriend was with on prior occasions or on the morning after the theft.

Analysis

On the basis of the evidence of the Landlord and in the absence of evidence to the contrary, I find that the Tenant was required to pay monthly rent of \$825.00 by the first day of each month.

Section 44 of the *Residential Tenancy Act (Act)* outlines a variety of ways to end a tenancy. I find that this tenancy ended when the Tenant returned the keys on June 14, 2012, pursuant to section 44(1)(d) of the *Act*, which stipulates that a tenancy ends if the tenant vacates or abandons the rental unit.

In determining that the tenancy ended on June 14, 2012, I find that the Tenant submitted no evidence to corroborate her claim that the locks to the rental unit were changed prior to June 13, 2012 or that refutes the male Agent for the Landlord's testimony that the locks were not changed until June 15, 2012. In circumstances where a tenant is alleging the tenant was denied access to the rental unit, the burden of proving that access was denied rests with the tenant.

Section 44(1)(a) of the *Act* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of

the *Act*. Although the Landlord did provide the Tenant with a letter directing the Tenant to vacate by May 31, 2012, I find that this did not serve as proper notice to end a tenancy as it was not served in the approved form, as is required by section 52(e) of the *Act*. I therefore cannot conclude that this tenancy ended in accordance with section 44(1)(a) of the *Act*.

As tenancy had not ended by June 01, 2012, I find that the Tenant was obligated to pay rent of \$825.00 by June 01, 2012. As no rent has been paid for June, I find that the Landlord is entitled to the full amount of the claim for unpaid rent, which is \$412.50. I am unable to order the Tenant to pay the full amount of rent due for June, as the Landlord has not applied for the full amount.

I find that there is insufficient evidence to determine whether a condition inspection report was completed at the end of the tenancy. In determining this matter I was heavily influenced by the absence of evidence that corroborates the female Agent for the Landlord's testimony that the report was completed in the presence of the Tenant or that refutes the Tenant's testimony that the report was not completed in her presence. As I am unable to determine which party is being truthful in this regard, I am unable to determine whether either party has extinguished their right to the security deposit.

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act (Act)*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find, on the balance of probabilities, that the Tenant was provided with two sets of keys to the rental unit. I find it highly improbable that only one set of keys would be provided to the unit, given that the Tenant was occupying the rental unit with her boyfriend. I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant did not return all of the keys to the rental unit.

In addition to establishing that the Tenant did not return the keys, the Landlord has an obligation to establish the cost of replacing the keys whenever compensation for damages is being claimed. In these circumstances, I find that the Landlord failed to establish the true cost of replacing the keys. In reaching this conclusion, I was strongly influenced by the absence of documentary evidence, such as a receipt, that shows it cost \$25.00 to replace keys. I therefore dismiss the Landlord's claim for compensation for replacing keys.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant did not leave the blinds in reasonably clean condition. I therefore find that the Landlord is entitled to compensation for the two hours the Landlord's employee spent cleaning the drapes, at an hourly rate of \$30.00, which I find to be reasonable compensation for labor of this nature.

I find that the Landlord has submitted insufficient evidence to establish that the carpets required cleaning at the end of the tenancy and I dismiss the claim for cleaning the carpets. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Agent for the Landlord's testimony that the carpets required cleaning or that refutes the Tenant's testimony that the carpets did not require cleaning. In determining this matter I have placed no weight on the condition inspection report the Landlord completed at the end of the tenancy, as it has not been established that the report was completed in the presence of the Tenant.

I find that the Landlord has submitted insufficient evidence to establish that the person who broke into the rental unit was a guest of the Tenant's. In reaching this conclusion I was heavily influenced by the fact the surveillance video, which forms the basis of the Landlord's conclusions, was not submitted in evidence. In my view, this evidence should have been presented at the hearing so that I could determine whether it was of sufficient quality to connect the thief with the Tenant and so the Tenant could have a reasonable opportunity to dispute the Landlord's conclusions.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord failed to comply with section 38(1), as the Landlord has not repaid the security deposit and the Landlord did not file an Application for Dispute Resolution until more than two months after the tenancy end and the Landlord received the forwarding address, in writing.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit that was paid.

I find that the Landlord's application has some merit and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$522.50, which is comprised of \$412.50 in unpaid rent, \$60.00 for cleaning the blinds, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain this amount from the Tenant's security deposit in full satisfaction of this monetary claim.

I find that the Tenant has established a monetary claim, in the amount of \$825.00, which is double the security deposit. After offsetting the two claims, I find that the Landlord must pay the Tenant \$302.50 and I grant the Tenant a monetary Order for this amount. In the event the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court 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: November 01, 2012.

Residential Tenancy Branch