



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for damages to the unit and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave 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.

The parties confirmed receipt of all evidence submissions.

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

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on June 1, 2012. Rent in the amount of \$755.00 was payable on the first of each month. A security deposit of \$377.50 was paid by the tenants.

The landlord claims as follows:

a.	Loss of rent for September 2012	\$755.00
c.	Cleaning	\$60.00
d.	Will Search	\$189.50
e.	Filing fee	\$50.00
	Total claimed	\$1,147.30

Will Search

The landlord is seeking to recover the cost of the will search for the deceased tenant. Filed in evidence is a copy of the Will search.

Loss of rent for September 2012

The landlord testified on August 25, 2012, she and her partner observed the tenant moving all the belongings from the rental unit. The landlord testified her partner had a conversation with the tenant and after that conversation they felt the tenant was abandoning the rental unit.

The landlord testified that on August 27, 2012, they posted a notice on the door of rental unit, which stated they have taken possession of the rental unit due to abandonment by the tenant. Filed in evidence is a copy of the letter and a photograph showing the letter was posted to the door on August 27, 2012.

The witness for the landlord testified on August 25, 2012, he spoke with the tenant as he was loading a U-Haul with furniture. The witness stated that the tenant told him he was moving back to Ontario and that the tenant stated, "I got to do what I got to do and would not be providing notice to end tenancy".

The tenant testified that he was not planning to move from the unit until the end of September 2012, and still had time to give the landlord written notice to end tenancy. The tenant stated he rented a U-Haul for August 25, and 26, 2012, in order to dispose of his mothers belonging as she had passed away earlier in the month. The tenant stated he had emptied out the rental unit, however, he was still planning on occupying the unit, until he finalized his plans.

The tenant testified that he had a conversation with the landlord's witness, however, he denies telling the witness he was not going to provide proper notice. The tenant stated he did tell the witness he was unsure of what his plans were and said "he had to do what he had to do".

The landlord witness when cross-examined by the tenant said, "it was something like that".

The tenant testified he came back to the rental unit on August 27, 2012 and he found a letter taped to the door, which told him the landlord has taken possession of the unit due to abandonment. The tenant stated he felt the notice was legal and he did not

speak to the landlord as he was under a lot of stress and was glad to be done with it. The tenant stated he gave his sister the keys to return to the landlord.

The landlord denies the tenant came back to the unit on August 27, 2012, however, acknowledge receiving the key on August 31, 2012, in a rent drop off box.

Carpet cleaning and cleaning unit

The landlord testified the carpets were cleaned prior to the tenants moving into the unit. The landlord stated that due to the stains on the carpets, they were required to be cleaned. Filed in evidence are photographs of the carpets which show some stains.

The landlord testified they are also seeking to recover the three hours it took to clean the unit at the rate of \$20.00 per hour.

The tenant testified that his mother was bed ridden and there may have been some stains on the carpets. The tenant stated he could have borrowed his sister's carpet cleaner and cleaned the carpet and done further cleaning, however, the landlord took possession of the rental unit prior to the tenancy legally ending.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

To prove a loss and have one party pay for the loss requires the other claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the landlord has the burden of proof to prove a violation of the Act by the tenant and a corresponding loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Will Search

I find there is no provision under the Act that allows a landlord to recover a will search fee. Therefore, I dismiss the landlord claim to recover the will search fee.

Loss of rent for September 2012, carpet cleaning and cleaning unit

In this case, the tenant paid rent for the month of August 2012. However, on August 27, 2012, the landlord took possession of the unit as she deemed the unit abandoned based on the tenant removing his belongings on August 25 and 26, 2012, and the conversation her partner had with the tenant.

The evidence of the tenant was he told the landlord's witness that he was unsure of what his plans were as he was still mourning the loss of this mother, but he had to do what he had to do. The evidence of the tenant was that he was planning to keep possession of the unit until the end of September 2012 and still had time to provide proper notice to end tenancy.

I find that the landlord's action of taking possession of the unit due to abandonment was premature as the tenant had the right to possess the rental unit until August 31, 2012. The tenant may have had his personal belongings removed from the rental unit, however, the tenant still had the legal right to hold possession of or to keep for his use the rental unit as rent was paid to the end of the month.

The landlord did not receive written notice from the tenant indicating that he would be vacating the rental unit in the proper form as required by the Act. The landlord can only claim abandonment when tenant has not paid rent and the tenant has vacated the unit. The earliest date the landlord may have determined the rental unit was abandoned would have been on September 2, 2012, if rent was not paid on the first of the month and the rental unit remained vacant.

I find the landlord has failed to prove the tenant has violated the Act. Rather, I find the landlord breached the Act, when they prematurely took possession of the unit on August 27, 2012, as the tenant had the right to possess the unit, even if the unit was empty, as rent had been paid up to August 31, 2012. I find the landlord ended the tenancy contrary to the Act on August 27, 2012.

As a result, I dismiss the landlord's claim for compensation for loss of rent for September 2012.

I further find that the landlord is not entitled to any cleaning cost as the tenant did not have an opportunity to clean the unit, since the landlord took possession of the unit on August 27, 2012 and rent was paid until August 31, 2012.

As the landlord's application is dismissed, the landlord is not entitled to recover the filing fee from the tenant. The landlord is not granted permission to retain the security deposit. I order the landlord to return the full amount of the security deposit (\$377.50) to the tenant.

I grant the tenant a monetary order in the amount of **\$377.50**, should the landlord fail to comply with my order. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord's application is dismissed.

The tenant is granted a monetary order to enforce, should the landlord fail to return the security deposit to the tenant.

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 29, 2012.

Residential Tenancy Branch