



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Preliminary Issues

Upon review of the Landlord's application he confirmed that he was seeking to keep the security deposit as compensation for the Tenants breaking their agreement, as noted in the Details of the Dispute. He then requested that I amend his application to include his request for monetary owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. Based on the foregoing I amended the Landlord's application, pursuant to section 64 of the *Act*.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order to keep the security deposit, for monetary owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenants for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Landlord be granted a Monetary Order?

Background and Evidence

The parties confirmed that the Tenants had arranged to rent the unit without personally seeing it. They had a family member view the rental unit on their behalf, prior to them agreeing to take it. The unit was still occupied by the former tenant at the time their family member viewed it.

The parties acknowledged that they had entered into an agreement whereby the Tenants would gain access to the rental unit on August 31, 2012 and would enter into a long term tenancy upon their arrival, for the monthly rent of \$1,600.00. The Tenants paid the Landlord \$800.00 by e-mail transfer on July 28, 2012 as their deposit.

The parties had arranged to meet at the rental unit between 4:00 – 6:00 p.m. on August 31, 2012, to conduct the move in inspection and sign the documents; however, the Tenants were delayed. They called the Landlord at 6:00 p.m. to advise they would be about 1 – 2 hours late. The Landlord advised the Tenants that he could not meet them that evening and that he would leave the keys in the mailbox so that they could move in upon their arrival.

When the Landlord attended the unit on the morning of September 1, 2012, the Tenants had moved in approximately 75% of their possessions. The Tenants were upset with regards to the condition of the unit and as they began the inspection the conversation became what both parties referred to as being, “frustrating”.

The Tenant submitted that one thing led to another and after the conversation escalated the Landlord told them “if you’re not happy just leave”. The Landlord submitted that he attempted to resolve the issue and went outside to call his cleaning contractor. When he went back inside the Tenants told him they were leaving.

The Tenant stated that after they told the Landlord they were leaving he told them they had two hours to get out. They were concerned that the Landlord would attempt to hold them responsible for the condition of the house so they requested he return to conduct a move out inspection but he refused. They left the Landlord a voice message at 11:45 to say they had moved out and then sent him a text at 11:46 asking if he wanted to inspect the property.

The Landlord confirmed that he declined to inspect the rental property after they had moved out because he did not want to create further tension between them. He confirmed receiving their forwarding address, in writing in the mail, on September 14, 2012. He has not returned their deposit and feels he is entitled to retain it for having to go through the hassle of losing the tenancy.

The Landlord confirmed that he listed the house for sale on September 10, 2012 and accepted an offer that same day. The title transferred in October 2012.

In closing, the Tenant noted that he could have applied for return of double his deposit and chose not to go that route. They simply want to have their money returned so they can move forward.

The Tenant provided his new address during the hearing which I have listed on the front page of this decision.

The Landlord submitted documents into evidence which included, among other things, copies of: his written statement; witness statements, and a carpet cleaning receipt.

The Tenants submitted documents into evidence which included, among other things, copies of: photos of the unit; their written statement; text messages; a witness statement; and their rental references.

Analysis

When a landlord makes a claim for compensation, damage or loss the burden of proof lies with the landlord to establish their claim. To prove a claim the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I have carefully considered the aforementioned and on a balance of probabilities I find as follows:

The evidence supports that the relationship between the parties became acrimonious on September 1, 2012, which resulted in the Tenants vacating the property without notice, as required by the *Act*. The Landlord took no action to re-rent the unit and sold the property the same day he listed it, September 10, 2012.

Based on the foregoing, I find the Landlord did not take steps to mitigate or minimize his rental loss; rather he sold the property nine days after the Tenants vacated the property. Furthermore, there is insufficient evidence to prove the actual amount required to compensate for the alleged loss or to prove there was an actual loss. Accordingly, I dismiss the Landlord's claim, without leave to reapply.

The Landlord is HEREBY ORDERED to return the Tenants' \$800.00 deposit, forthwith.

As the Landlord has not been successful with his claim he must bear the burden of the cost to file his application.

Conclusion

The Landlord's application is HEREBY DISMISSED, without leave to reapply.

The Landlord is HEREBY ORDERED to return the Tenant's deposit, forthwith. In the event that the Landlord does not comply with this Order the Tenants may file the Order with the Province of British Columbia Small Claims Court and enforce it 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: December 12, 2012.

Residential Tenancy Branch