



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF
 MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed to obtain a Monetary Order for unpaid rent or utilities, to keep all or part of the security deposit, for money 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 Tenant for this application.

The Tenant filed to obtain a Monetary Order for the return of double her security deposit and to recover the cost of the filing fee from the Landlord 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 and respond to each other's testimony. 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

1. Should the Landlord be issued a Monetary Order?
2. Should the Tenant be issued a Monetary Order?

Background and Evidence

The parties agreed that on August 17, 2012, they entered into a written fixed term tenancy agreement that began on September 1, 2012 and was to end on August 31, 2013. Rent was payable on the first of each month in the amount of \$1,430.00 plus \$55.00 for parking, and on August 17, 2012 the Tenant paid \$715.00 as the security deposit. The Tenant attended the move in inspection and signed the condition inspection report on September 1, 2012.

The Landlord stated that on September 4, 2012 they found the Tenant's keys, garage fob and parking tags pushed through the mail slot. They immediately posted a notice of final inspection on the Tenant's door and the move out condition report was completed in the Tenant's absence.

The Tenant confirmed that she saw the unit August 17, 2012, when the previous tenant was still occupying the unit. She signed the tenancy agreement August 17, 2012 agreeing to the fixed term tenancy. She confirmed that she attended the move in inspection with the Landlord and the Landlord's spouse. She argued that the inspection was brief.

The Tenant submitted that after she was given the keys she went to park her car and someone was in her parking stall. She told the Landlord and after they checked they told her no one was in her stall. She confirmed that she vacated the rental unit and said she broke her lease because the Landlords were rude. She added that her reasons for ending her tenancy were clear in her written submission. The Tenant began to argue that her keys did not work to let her into the building and then she confirmed that she did not know how to use them. When asked why she did not stay and request repairs and assistance she said that "if their attitude was right I would stay".

The Landlord advertised the unit again and was able to re-rent it as of October 1, 2012. They denied that the unit was in disrepair and added that they had two maintenance staff check the Tenant's parking stall and no one was parked in her stall. They noted that the September 1st weekend is their busiest weekend and that they have staff members on call all weekend long so the Tenant could have called the office and someone would have been dispatched to help her.

At the conclusion of the hearing the Tenant wanted to continue to argue her position. I explained that the hearing was over and I assured her that I would consider her testimony and all of the documentary evidence that was before me.

The Landlord submitted documentary evidence which included, among other things, copies of: the tenancy agreement; the move in and move out condition inspection report form; Canada Post receipts; a written statement; a letter issued to the Tenant; notice of final opportunity for inspection; a returned cheque notice from their bank; photos of the suite; advertisements; and a copy of the new tenant's tenancy agreement.

The Tenant submitted documentary evidence which included, among other things, copies of: a written statement; photos of the unit; and telephone records.

Analysis

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss 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.

Landlord's claim

Section 45 of the Act stipulates that a tenant may end a fixed term tenancy by giving the Landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is **not earlier** than the date specified in the tenancy agreement as the end of the tenancy. In this case the Tenant could not end this tenancy in accordance with the Act on a date earlier than August 31, 2013, which is the end of the fixed term tenancy.

Upon review of the evidence before me, notwithstanding the Tenant's arguments, I find the Tenant ended this tenancy on September 4, 2012, in breach of the Act, when she abandoned the property, without proper notice to the Landlord. The Tenant's breach has caused the Landlord to suffer a loss of \$1,684.46 which is comprised of \$1,430.00 for unpaid September 1, 2012 rent, \$100.00 administration costs to re-rent the unit, and \$154.46 in advertising costs.

Based on the foregoing I find the Landlord has met the burden of proof to establish their claim and I award them \$1,684.46 as listed above.

The Landlord has been successful with their application; therefore I award recovery of the filing fee in the amount of **\$50.00**.

Monetary Order –The Landlord is entitled to a monetary claim and this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

September 2012 Rent	\$1,430.00
Administrative fees	100.00
Advertising costs	154.46
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,734.46
LESS: Security Deposit \$715.00 + Interest 0.00	<u>-715.00</u>
Offset amount due to the Landlord	<u>\$ 1,019.46</u>

Tenant's application

The evidence supports the Tenant breached the Act by ending her tenancy without notice on September 4, 2012 (the date the Landlord received the keys and possession of the unit). The Landlord received the Tenant's forwarding address on September 11, 2012, and made their application for dispute resolution 14 days later on September 25, 2012.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest **or** make application for dispute resolution claiming against the security deposit.

In this case the Landlord did what was required of them as they made application to keep the security deposit within the required timeframe. The Landlord's claim has been offset against the security deposit; therefore, I find the Tenant's application has no merit and it is hereby dismissed, without leave to reapply.

As the Tenant has not been successful with her claim she must bear the burden of the cost to bring her application forward.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$1,019.46**. This Order is legally binding and must be served upon 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: December 13, 2012.

Residential Tenancy Branch