



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and for damage to the unit, site or property pursuant to section 67;
- authorization to retain all or a portion of the tenant's security and pet damage deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord's caretaker confirmed that the tenant handed him the tenant's September 4, 2012 written notice to end this tenancy by September 30, 2012. The tenant confirmed that she was handed a copy of the landlord's dispute resolution hearing package on October 12, 2012. I am satisfied that the above documents were served to one another in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's deposits in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy began on October 15, 2011. By the time the tenancy ended and the tenant vacated the rental premises by September 28, 2012, the monthly rent was set at \$725.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$372.50 security deposit and \$200.00 pet damage deposit, both paid on October 18, 2011.

The parties agreed that they conducted a joint move-in condition inspection on October 15, 2011. The tenant testified that she did not receive a copy of the landlord's move-in condition inspection report until the end of this tenancy. The parties agreed that they conducted a joint move-out condition inspection at the end of this tenancy and that the landlord provided a copy of the move-out condition inspection report to the tenant.

The landlord's application for a monetary award of \$1,975.00 included a request for \$725.00 in unpaid rent for October 2012, and \$1,250.00 for damage caused to the landlord's laminate flooring.

Analysis – Unpaid Rent

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for October 2012, the tenant would have needed to provide her notice to end this tenancy before September 1, 2012. As that did not occur, the landlord is entitled to compensation for losses he incurred as a result of the tenant's failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenant did not pay any rent for October 2012. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for October 2012. The landlord's agent and the landlord's caretaker testified that the landlord placed advertisements on a popular rental website by September 15, 2012. The landlord's caretaker testified that he received the tenant's written notice to end this tenancy on September 7, 2012. He said that the landlord was successful in locating a new tenant for this rental unit, who took possession on October 1, 2012, for the same \$725.00 monthly rental as that paid by the tenant. As such, I am satisfied that the landlord has discharged his duty under section 7(2) of the *Act* to minimize the tenant's loss. However, as the landlord's caretaker testified that the landlord received full rent from the new tenant for October 2012, there is no evidence that the landlord suffered a loss in rent for October 2012. As the landlord has not demonstrated any actual rental loss from the tenant's failure to comply with the provisions of section 45(1) of the *Act*, I dismiss the landlord's application for a monetary award for unpaid rent without leave to reapply.

Analysis – Damage to Flooring

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage, that the tenant caused the damage, and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Although the landlord submitted an estimate of the cost of replacing laminate flooring in the rental unit, the landlord's representatives testified that the flooring in question has not yet been replaced and no actual losses have yet been incurred. They confirmed that the new tenants are paying the same rent as that paid by the respondent in this application, including flooring that the landlord claims to have been damaged during the course of the respondent's tenancy. The landlord's caretaker said that the new tenant has indicated a willingness to relocate temporarily to some other location while the landlord undertakes repairs to the laminate flooring.

Under these circumstances, I find insufficient evidence to demonstrate that the landlord has suffered any actual losses arising out of the claim that the tenant damaged the laminate flooring. The landlord produced no receipts of any work done on this flooring to date and has entered into a new tenancy agreement that does not show any loss in value of the rental premises as a result of damage caused by the tenant to the flooring. The landlord has not provided a copy of the terms of the new tenancy agreement that would demonstrate that the landlord is required to install new laminate flooring as a term of that tenancy or that the landlord has agreed to reduce the new tenant's monthly rent if the laminate is not replaced.

I also find that the tenant provided considerable photographic evidence of a high quality that showed little evidence of damage to the laminate flooring beyond reasonable wear and tear. By contrast, the landlord provided four faxed photographs of very poor quality that revealed very little but for a single piece of laminate flooring that appeared to be slightly raised from the rest of the flooring. I find the landlord's faxed photographic evidence of such poor quality that I give very little weight to this evidence, especially as it contrasts with the photographs provided by the tenant in response to the landlord's application.

On the basis of the evidence submitted and for the reasons stated above, I dismiss the landlord's application for a monetary award for damage without leave to reapply.

As I have dismissed all of the landlord's claim for a monetary award, I also dismiss his application to retain any portion of the tenant's deposits. I order the landlord to return all of the tenant's deposits plus applicable interest forthwith. No interest is payable over this period. As the landlord has been unsuccessful in this application, he bears responsibility for his own filing fee for this application.

Conclusion

I dismiss the landlord's application in its entirety without leave to reapply.

I order the landlord to return the tenant's security and pet damage deposits, totalling \$572.50, forthwith to the tenant at the following mailing address provided by the tenant at this hearing:

2 - 1700 - 45th Street
Vernon BC V1T 7P8

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: January 17, 2013

Residential Tenancy Branch

