



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for compensation for damage to the unit, site or property, for compensation for loss or damage under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the “hearing package”) by registered mail on November 16, 2012. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord’s hearing package as required by s. 89 of the Act and the hearing proceeded with all parties present.

Issues(s) to be Decided

1. Are there damages to the unit and if so how much?
2. Is the Landlord entitled to compensation for the damage and if so how much?
3. Are there other losses or damages and is the Landlord entitled to compensation?
4. Is the Landlord entitled to keep the Tenant’s security deposit?

Background and Evidence

This tenancy started on April 1, 2012 although the Tenant moved in early on March 18, 2012. The tenancy was a fixed term tenancy with an expiry date of March 31, 2013. Rent was \$1,250.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$625.00 on March 12, 2012. Both the Landlord and the Tenant said no move in or move out condition inspection reports were completed. The Landlord said she received an email from the Tenant on September 24, 2012 indicating the Tenant was moving out on October 31, 2012. The Tenant moved out of the rental unit on October 24, 2012 and the tenancy ended on October 31, 2012. The Landlord said she returned the Tenants full security deposit on November 15, 2012. The Landlord said she rented the unit to new tenants who moved into the rental unit on November 1, 2012.

The Landlord said she made this application because she has incurred costs since the Tenant has moved out of the rental unit. The Landlord said she is breaking the tenancy agreement with the new tenants so she can move into the rental unit and as a result she has to pay the new tenants the equivalent of one month's rent or \$1,250.00. The Landlord said she believes the previous Tenant should be responsible for this as she was the first one to break the tenancy agreement and if the Tenant had not moved out the Landlord would not be responsible for this cost.

As well the Landlord said that she discovered a cracked window in the bedroom of the rental unit when she did the move in condition inspection report on November 1, 2012 with the new tenants. The Landlord said the window repair costs \$331.76 and the Landlord included a paid receipt for the repair.

The Landlord continued to say that she also incurred strata fees of \$100.00 and \$23.95 when the Tenant moved out and advertising fees of \$33.32 to rent the unit to new tenants. The Landlord said she is also claiming the postal costs for this application of \$21.82. The Landlord said her total claim is for \$1,760.85 plus the \$50.00 filing fee for this application.

The Tenant said she was surprised by the Landlord's application because she thought when the Landlord sent her full security deposit back everything was finished with the tenancy. The Tenant continued to say that she moved out because of lost income so she could not afford the rental unit anymore. The Tenant said she paid her rent to October 31, 2012 and new tenants started on November 1, 2012; therefore the Landlord did not lose any rental income.

The Tenant said she did not damage the window in the bedroom and when the Landlord and she did a walkthrough of the unit on October 24, 2012 there was no mention of a cracked window in the bedroom. The Tenant said she did not damage the window.

The Tenant continued to say that the strata fees were not part of the tenancy agreement and she was not told about them; therefore she does not feel she is responsible to pay the strata fees.

In closing the Landlord said she tried to settle this dispute with the Tenant but she was unable to come to an agreement, so she has made these claims to recover her costs.

The Tenant said in closing that she was surprised by the Landlord's application because the Landlord returned her full security deposit and so she thought the tenancy was completed. The Tenant said she is not responsible for the costs the Landlord is claiming.

Analysis

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

With respect to the Landlord's claim of \$1,250.00 for costs the Landlord will incur to end the tenancy with the new tenants. This expense is a cost relating to the new tenancy with the new tenants not with the prior Tenant. The previous tenancy with the Tenant ended on October 31, 2012 and there was no unpaid rent. The new tenancy started on November 1, 2012 with the new tenants; therefore there is no lost rent and as the Landlord has not paid the compensation to the new tenants there is no proven loss at this time. The Landlord's expense to end the new tenancy is not the responsibility of the previous Tenant; therefore I dismiss the Landlord's claim for \$1,250.00 without leave to reapply.

As the Landlord did not complete a move in or move out condition inspection report it is unclear when the window in the bedroom was broken. The Landlord said she missed the broken window during the walk through on October 24, 2012 and the Tenant said she did not damage the window. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. I find the Landlord has not established grounds to prove the Tenant broke the window and as a result I dismiss the Landlord's claim of \$331.76 without leave to reapply.

The Landlord has also claimed a \$100.00 strata move in or out fee, \$23.95 for strata documentation costs and \$33.32 for advertising costs to rent the unit. Strata costs are costs that are an agreement between the Owner of a Property and the Strata and if these costs are not included in the tenancy agreement then the expenses that the Strata charges the Owner of the rental unit are not the responsibility of a tenant. Consequently I find the Strata expenses of \$100.00 and \$23.95 are not the responsibility of the Tenant and therefore I dismiss these expenses without leave to reapply.

With regard to the advertising costs of \$33.32 I find that these costs were incurred because the Tenant ended the tenancy before the expiry date on the tenancy agreement; therefore I find the Tenant is responsible for the advertising costs of \$33.32.

With respect to the postage costs incurred by the Landlord to make this application, these costs are not eligible for reimbursement as these costs are part of the cost to prepare the application and participants are responsible for any costs to prepare the application. Consequently I dismiss the postal costs of \$21.82 without leave to reapply.

As the Landlord has been unsuccessful in this matter, I order the Landlord to bear the cost of the filing fee of \$50.00 which the Landlord has already paid.

Conclusion

A Monetary Order in the amount of \$33.32 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: February 18, 2013

Residential Tenancy Branch

