



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning applications filed by the landlords and by the tenant. The landlord has applied for a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for return of double the amount of the security deposit.

The named landlord attended and also represented the landlord company. The tenant also attended the conference call hearing, and both parties gave affirmed testimony.

The tenant indicated that the landlord did not serve the tenant with the Landlord's Application for Dispute Resolution, however, the landlord provided evidence of having sent the documents to the tenant by registered mail on December 21, 2012 but the evidence does not contain an address the package was sent to.

The landlord attended the hearing about 8 minutes into the conference call, and testified that the documents were sent to the tenant's address that is contained on the Tenant's Application for Dispute Resolution, and the landlord commented that perhaps with the Christmas rush for mail, the documents have not yet reached the tenant. In the circumstances, I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?

- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?

Background and Evidence

The landlord testified that this month-to-month tenancy began on January 1, 2012 and the tenant moved out sometime in March, 2012 without any notice to the landlord. Rent in the amount of \$800.00 per month was payable on the 1st day of each month, and a written tenancy agreement was prepared, although a copy was not provided for this hearing. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$400.00 and no pet damage deposit was collected.

The landlord further testified that a move-in condition inspection report was completed prior to the commencement of the tenancy, but a copy has not been provided for this hearing. The landlord also testified that in mid-March, 2012 another tenant had advised the landlord that the tenant had vacated the rental unit. The landlord attended the rental unit and a caretaker opened the door. The landlord later testified that the caretaker had to break the lock to the rental unit.

The rental unit required cleaning, and the landlord claims \$250.00 for that service, but has not provided a receipt or any other evidence to substantiate that testimony. The landlord also claims \$75.00 for replacing the lock, but has not provided any evidence to substantiate that cost.

The landlord also testified that the rental unit was advertised for rent in mid-April, 2012 for \$800.00 per month and \$400.00 security deposit, and was re-rented for May 1, 2012 but has not provided any testimony or evidence with respect to the dates that advertisements ran. The landlord testified that copies of the advertisements were not kept and it is not known when the advertisement in the local Vancouver area newspaper or the Craigslist advertisement started. The landlord claims one month of rent as loss of rental revenue.

The tenant testified that the landlord did not cause a move-in condition inspection report to be completed, or a move-out condition inspection report. The tenant testified that upon moving in, the rental unit was dirty, there was a hole in the bedroom ceiling, cracks in the walls, no hot water in the sink, another hole in the bathroom, and stated

that it was the worst place that the tenant had ever resided in. The tenant stayed less than 2 months and left the rental unit cleaner than it was at move-in.

The tenant further testified that the landlord was told on February 1, 2012 that the tenant had found another place to live and would be moving out at the end of February. The landlord told the tenant that the notice had to be in writing, and on February 2, 2012 the tenant provided the written notice, but a copy was not provided for this hearing.

The tenant also testified that the key, and there was only one key, was returned to the landlord personally on March 1, 2012. The landlord had promised other keys, such as to the mailbox, but none were provided to the tenant.

The tenant testified that the landlord was provided with the tenant's forwarding address in writing but does not recall the date.

Prior to completing any cross examination of the tenant, the landlord indicated that it was necessary to leave the conference call hearing, and disconnected.

Analysis

Firstly, with respect to the landlord's claim for loss of revenue for one month of the tenancy, the *Residential Tenancy Act* requires any person who makes a claim against another to do whatever is reasonable to mitigate, or reduce the loss suffered. That includes advertising the rental unit for rent at a reasonable amount of rent in comparison to the tenancy agreement. The landlord testified that the rental unit was advertised for rent about a month after the tenant moved out but was not able to provide the date that any advertisements ran and did not provide any evidence to substantiate that testimony. Therefore, I must find that the landlord has failed to provide any evidence of mitigation or that the landlord did what was reasonable to re-rent the rental unit.

With respect to the landlord's claim for damages, I have no evidence before me of any cleaning required. The tenant resided in the rental unit for less than 2 months, and testified to leaving the rental unit in a better condition than it was at the commencement of the tenancy. A landlord is required under the *Act* to ensure that move-in and move-out condition inspection reports are completed. The onus to do so is on the landlord, not the tenant, and the regulations go into great detail about how those condition inspections are to be done, and state that the inspection reports are evidence of the condition of the rental unit at the commencement and end of the tenancy. In the absence of any reports, I cannot be satisfied that the landlord has established that the tenant is responsible for further cleaning.

The landlord also claims \$75.00 for replacing the lock and testified that the tenant did not return the keys. The tenant testified that there was only one key and it was returned to the landlord on March 1, 2012. The tenant has disputed the landlord's claim, and the landlord has not provided any evidence of a broken lock or the cost to replace it.

In the circumstances, I find that the landlord has failed to establish any of the claims before me.

With respect to the tenant's application, the tenant testified that a forwarding address was sent to the landlord but does not recall the date. A tenant is entitled to recovery of double the amount of the security deposit or pet damage deposit if the landlord has not made a claim against it or repaid the deposits within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. The landlord denied receiving it, and the tenant has failed to prove that it was received by the landlord or when. Therefore, I cannot find that the tenant is entitled to double the amount of the deposit, but the tenant is entitled to recovery of the base amount.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant a monetary order in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$400.00.

This order is final and binding on the parties and may be enforced.

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 04, 2013.

Residential Tenancy Branch

