



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MNSD, MNR, MNDC, FF
For the tenant: MNSD, MNDC

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The landlord applied for authority to retain the tenant's security deposit, a monetary order for unpaid rent and for money owed or compensation for damage or loss and for recovery of the filing fee.

The tenant applied for a return of her security deposit, a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, neither party raised any issues regarding service of the application or the other's evidence.

I have reviewed the oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

1. Is the landlord entitled to retain the tenant's security deposit, to a monetary order and to recover the filing fee?
2. Is the tenant entitled to a monetary order, which would include her security deposit, and to recover the filing fee?

Background and Evidence

The undisputed evidence is that the tenant moved into the rental unit on or about July 23, 2012, signing a three month, fixed term tenancy agreement, ending on October 31, 2012. The parties then entered into a subsequent three month, fixed term tenancy

agreement signed by the parties, with the fixed term to expire on January 31, 2013. Monthly rent was \$595.00 and the tenant paid a security deposit of \$297.50 at the beginning of the tenancy.

The landlord's relevant evidence included statements from other tenants in the residential property, newspaper advertisements, and the tenancy agreements.

The tenant's relevant evidence included statements from other tenants in the residential property, some concerning mail collection, notices from the landlord about entry into the rental unit, a note from a doctor about the tenant not being fit to move furniture, and a letter from the landlord, dated December 6, 2012, informing the tenants that leases would not be renewed due to extensive electrical renovation to the existing wiring.

Landlord's application-

The landlord's monetary claim is \$1785.00, which is for loss of rent revenue for the months of November and December 2012, and January 2013, in the amount of \$595.00 each month. The landlord also seeks recovery of the \$50.00 filing fee.

In support of his application, the landlord said that the tenant provided written notice on October 29, 2012, that she was ending the tenancy by November 5, 2012, due to a family emergency. The letter was provided into evidence, in which the tenant acknowledged that she understood a "30 day vacate notice" was required.

The landlord said they made immediate attempts to re-rent the rental unit as shown by their written evidence. I note that the written evidence shows that the first advertisement was placed in a local newspaper on November 8, 2012, for a monthly rent of \$625.00 and that the rental unit remains unrented.

Due to the insufficient notice provided by the tenant, the landlord sustained a loss of revenue for November and December 2012 and January 2013.

When questioned, the landlord said they stopped advertising the rental unit by December 6, 2012, as the rental unit was scheduled to undergo electrical renovations.

Tenant's application-

The tenant has requested a monetary order of \$493.00.

The tenant explained that she was coerced into signing a new 3 month tenancy agreement by the landlord's property manager, and as such, should have been allowed to leave at the end of the first fixed term, or October 31, 2013.

The tenant said she agreed that she stayed in the rental unit for 5 days in November and was obligated to the landlord for overholding equal to the daily rate for those 5 days. The tenant submitted that the daily rate was \$19.08, for 5 days each, and that the

landlord should retain the amount of \$95.40 from her security deposit and return the rest.

In explanation of her request for \$100.00 for loss of electricity, the tenant said she was completely without power from October 24-25, 2012.

The tenant also submitted that she was entitled to \$100.00 as she had no heat at all in September 2012, in contravention of the tenancy agreement.

In request for another \$100.00, the tenant said that the property manager subjected her to harassment, causing stress related illnesses, and that the property manager was not delivering her mail as required.

In response, the landlord said that the electrical wires were worked on on October 24-25, 2012, but that the power was only off for short periods during the day. The landlord contended that the tenant had power during the night.

As to the power for September, the landlord said that the power for the entire residential property was on a timer and not controlled by a thermostat. The landlord contended that if the tenant was not warm enough, the landlord kept extra heaters for the tenants' comfort. The landlord pointed out that electricity was included in rent and the extra heaters would not impact the tenant.

In response to the harassment, the property manager denied harassing the tenant; rather if anything, the two had a conflict of personalities.

The landlord said that he never realized the tenant had any issues, as he was never notified by the tenant.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement pursuant to section 7 and 67 of the Act, the claiming party, both parties in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Landlord's application-

As to the issue of unpaid rent or loss of revenue, Section 45 of the Act requires a tenant to give written notice to end the tenancy that is not earlier than one month after the date the landlord receives the notice and is at least the day before the day in the month that rent is payable under the tenancy agreement. In other words, one clear calendar month before the next rent payment is due is required in giving notice to end the tenancy.

In the case before me, the tenant gave written notice to the landlord on October 29, 2012, that she was leaving on November 5, 2012, which I find to be insufficient notice by the tenant as required by the Act.

I also took into account that the landlord advertised the rental unit for a monthly rent higher than the rent paid by the tenant, beginning on November 8, 2012. I find it reasonable that the landlord would be unable to secure a new tenant for the first part of November 2012, due to the tenant vacating on November 5, 2012, but I am not convinced that the landlord minimized their loss for the latter half of November 2012, due to the increased rent and the fact that the landlord did not begin advertising until November 8, 2012.

I therefore find that the landlord has proven a loss of revenue for the first half of November 2012, in the amount of \$297.50, equal to half the monthly rent of \$595.00, but has failed to minimize their loss for the 2nd half of November 2012.

As to the landlord's claim for loss of revenue for December 2012 and January 2013, the landlord confirmed that they stopped advertising the rental unit by December 6, 2012. I therefore find the landlord failed to take reasonable steps to minimize their loss for those months and I dismiss their claim \$1190.00.

Tenant's application-

The tenant is claiming for a balance of her security deposit, after deducting an amount equal to 5 days of rent for overholding, which will be addressed later in this Decision.

As to the tenant's remaining claims for \$300.00 relating to issues arising during the tenancy, I find the tenant submitted insufficient evidence that she addressed these issues in writing with the landlord, when the landlord would be in a position to deal with such issues as and when they arose.

I find the filing of an application for dispute resolution in response to the landlord's application for monetary compensation, and well after the tenancy has ended, results in the tenant's claim failing based upon her failure to minimize her loss.

I therefore find the tenant submitted insufficient evidence of meeting the fourth step in her burden of proof and I dismiss her monetary claim.

Conclusion

The landlord has been granted a monetary award of \$297.50 for loss of rent revenue as explained above. The landlord is authorized to retain the tenant's security deposit of that amount in satisfaction of their monetary award.

I allow the landlord recovery of the filing fee of \$50.00 and grant him a monetary order in that amount, pursuant to section 67 and 72 of the Act. I have enclosed the monetary order in the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

As I have authorized the landlord to retain the tenant's security deposit and I have dismissed the tenant's remaining monetary claim, I therefore dismiss the tenant's application, without leave to reapply.

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 25, 2013

Residential Tenancy Branch

