



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. The tenant confirmed receipt of the Notice of hearing and evidence within the required time-frame. I have considered all of the evidence and testimony provided.

Preliminary Matter

The landlord's application indicated a claim in the sum of \$1,434.87, which had been reduced by the amount of the deposit held by the landlord. The total claim made in the details of the dispute section of the application was \$2,534.87.

Issue(s) to be Decided

Is the landlord entitled to compensation for loss of November, 2012 rent revenue in the sum of \$2,200.00?

Is the landlord entitled to compensation for items purchased in the sum of \$334.87?

May the landlord retain the security deposit?

Is the landlord entitled to filing fee costs?

Background and Evidence

The parties agreed that on October 3, 2012 they met at a coffee shop and then viewed the rental unit. The tenant gave the landlord a cheque in the sum of \$1,100.00; a copy of that cheque was supplied as evidence. When issuing the cheque the tenant notated that the cheque was issued as a security deposit. The cheque was deposited to the landlord's account on October 9, 2012.

The landlord said that the tenant was to take possession of the unit effective November 1, 2012; rent was \$2,200.00 per month. The landlord did agree to purchase a few furniture items, such as 2 lamps, light bulbs, a living room painting and a bedroom painting. Copies of receipts in the sum of \$334.87 were supplied as evidence. The landlord has claimed the cost of these items. The landlord confirmed that he has possession of the items purchased.

There was no dispute that the landlord had agreed to make several improvements to the rental unit, which the tenant was going to use as part of his stock of corporate rentals.

On October 24, 2012, the landlord received an emailed dated October 23, 2012. The email included an attached letter, a copy of which was submitted as evidence. The tenant informed that landlord that upon further inspection of the unit, which had taken place on October 23, 2012, he had concluded that the upgrades and existing furniture were not at the level he had expected. The tenant indicated that the landlord had not met the agreed-upon standards and that the tenant wished to have the security deposit returned.

The landlord said that during October 2012 he had turned away other potential renters and that after October 23 he was unable to identify an occupant for November 1, 2012. The tenancy was to be a 1 year fixed-term; the landlord is claiming loss of November, 2012 rent in the sum of \$2,200.00.

The tenant stated that he had not entered into a tenancy agreement; that he had expected certain details to be addressed in the unit, before he would commit to accepting the unit as a rental. The tenant did not view the payment of a security deposit as an agreement to rent the unit and had expected to sign a tenancy agreement. The tenant said that the deposit was meant to provide the landlord with funds to purchase items for the unit.

The landlord said that they were to meet to sign a tenancy agreement; however, after the October 23, 2012 email was received it was obvious that the tenant would not proceed with the rental.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 16 of the Act provides:

16 *The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.*

The tenant did not reside in the rental unit; however I find that on October 3, 2012 the parties had come to an agreement for rental of the unit effective November 1, 2012; even though the tenant did not occupy the rental unit.

I have also based this decision on Section 17 of the Act, which provides:

17 *A landlord may require, in accordance with this Act and the regulations, a tenant to pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement*

I have rejected the tenant's submission that the deposit was meant as a way for the landlord to make purchases of items for the unit; this is contrary to the notation made by the tenant, on the cheque.

I find that once payment of the security deposit was made the parties had contracted to enter into the tenancy. I have rejected the submission that the tenant had the right to cancel the agreement; this right did not extend to the landlord, who I find was obligated, after receiving the security deposit cheque, to provide the rental unit to the tenant effective November 1, 2012.

Therefore, as the tenant did not take possession of the rental unit or pay November 2012 rent I find that the landlord is entitled to compensation in the sum of \$2,200.00 for loss of November 2012 rent revenue. This amount will be reduced by the \$1,100.00 security deposit, which the landlord may retain.

I find that the landlord applied claiming against the deposit within 15 days of October 24, 2012; the date the tenant indicated he was cancelling the agreement.

I find, pursuant to section 44(f) of the Act, that the tenancy ended effective October 24, 2012.

In the absence of evidence of a copy of a fixed-term tenancy agreement I find, pursuant to section 62(3) of the Act, that this was a month-to-month tenancy.

If the tenant had been unhappy with the unit the tenant was free to submit an application requesting compensation for any breach of the Act. However, I find that the agreement to provide certain upgrades such as art and lamps was not a term of the tenancy agreement. The upgrades were not clearly stated and were so vague that the parties disputed what exactly it was the landlord should have purchased or improved. Therefore, I find that the claim for the cost of purchase of the furniture and art is not contemplated by the Act and I decline jurisdiction.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of \$1,150.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to compensation for loss of rent revenue in the sum of \$2,200.00.

The landlord may retain the \$1,100.00 deposit.

Jurisdiction is declined in relation to the claim for items purchased.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 06, 2013

Residential Tenancy Branch

