



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

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

The landlords applied for a monetary order for money owed or compensation for damage or loss and for alleged damage to the rental unit, 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 were provided the opportunity to present their evidence orally, to make submissions, and refer to documentary evidence timely submitted prior to the hearing.

At the outset of the hearing, neither party raised any issues regarding service of the respective applications or the evidence.

I have reviewed all evidence and testimony 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.

Preliminary matter-

The landlord argued that the Residential Tenancy Act did not apply to the parties’ dispute as she alleged that she shared bathroom and kitchen facilities with the tenant and was the owner of the residential property.

The hearing proceeded first with the parties' respective positions regarding jurisdiction and then next with the parties' respective applications.

Issue(s) to be Decided

Is the tenant entitled to a monetary order comprised of his security deposit and other compensation, and to recover the filing fee?

Is the landlord entitled to a monetary order, to retain the tenant's security deposit, and to recover the filing fee?

Background and Evidence

The tenant stated that this tenancy began on October 29, 2010, ended on November 30, 2012, monthly rent, with the exception of one month, was \$450.00 and the tenant paid a security deposit of \$225.00 at the beginning of the tenancy.

The parties agreed that there was not a move-in or move-out condition inspection report.

Issue of jurisdiction-

The tenant explained that he lived in a self contained suite in the basement level of the landlord's home, with the landlord and her family living in the upper two floors.

The tenant stated that he and any roommate who happened to reside in the basement unit shared a bathroom and kitchen; the tenant further said that the landlord did not use his kitchen or bathroom facilities.

The tenant acknowledged that the landlord and her family had unfettered access to the basement unit for use of the pool table located there, but again denied the landlord or her family used the bathroom or kitchen facilities when they were in the lower level.

In response, the landlord said that she just basically rented out a room in her family home to the tenant, calling it a sleeping room, and that she did use the kitchen and bathroom facilities.

When questioned, the landlord said that she would put her potatoes in the downstairs oven when she had her extended family in for dinners, as well as her family used the

bathroom facilities when they would enter the basement level for entertainment purposes, such as playing pool or watching television.

When questioned further, the landlord admitted collecting a security deposit in case the tenant damaged the furnished living accommodations.

Tenant's application-

The tenant's claim for monetary compensation is \$3329.65, comprised of \$3000.00 for lack of quiet enjoyment, \$30.65 for overcharged rent, \$99.00 for missing personal items, and \$200.00 for the balance of his security deposit which was not returned, doubled.

As to the matter of the security deposit, the tenant stated that he was unsure of the date he provided the landlord with his written forwarding address; however on December 28, 2012, he received a portion of security deposit from the landlord, in the amount of \$125.00. The tenant contended that he was entitled to the balance, \$100.00, in double the amount due to the landlord's failure to return full amount.

As to the matter of the tenant's request for \$3000.00, he claimed that the other occupant in the lower suite kept him up at all hours of the night, disrupting his sleep and use of the rental unit. This situation continued for 6 weeks, causing him to turn in his notice to end the tenancy.

The tenant admitted that he did not put his concerns in writing, but telephoned the landlord numerous occasions, with no response from the landlord.

As to his request for \$99.00, the tenant contended that this was the value of the missing items another occupant stole from him.

As to his request for \$30.65, the tenant explained that during the tenancy, the landlord issued him a Notice of Rent Increase, which increased the monthly rent from \$450.00 to \$500.00. The tenant said he paid this amount for one month, before the landlord returned the rent to \$450.00.

After consultation with the Residential Tenancy Branch ("RTB"), the tenant calculated the legal amount of rent increase allowed was \$19.35; therefore the tenant contended that he overpaid the amount of \$30.65 for the one month that he paid \$500.00.

As to his request for \$200.00, the tenant said that due to the landlord not returning the balance of security deposit, that being \$100.00, he was entitled to that amount being doubled.

Landlords' response to the tenant's application-The landlord acknowledged returning only a portion of the security deposit due to alleged damage by the tenant and cleaning.

The landlord filed an application for dispute resolution, but the application was not made until March 7, 2013, and she did not claim against the deposit in her application.

The landlord returned \$125.00 in a cheque written on December 20, 2012.

As to the alleged loss of quiet enjoyment by the tenant, the landlord agreed that the other occupant had mental health issues and a mistake was made by renting the room to this occupant; however the landlord said that the tenant could go to his room and lock the door.

As to the tenant's request for an overpayment of rent, the landlord contended that they were losing money when only one of the rooms was being rented, necessitating a rent increase to \$500.00.

Landlord's application-The landlord's monetary claim is \$143.56, consisting of \$83.56 for a broken table top glass and cleaning costs.

The landlord said that the tenant broke a glass in a table top in the lower level, reminding me that the suite was fully furnished. The landlord said she replaced the glass with Plexiglas.

The landlord also said that the cost of cleaning was the \$60.00 she paid to her grandson.

In response, the tenant denied breaking the glass and that the glass may have been broken or cracked at the beginning of the tenancy.

The tenant denied leaving the rental unit dirty.

Analysis

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

Analysis on Jurisdiction

In order for me to make a decision on the parties' applications, I must first decide the issue raised by the landlord, that this dispute is excluded from the jurisdiction of the *Residential Tenancy Act* due to her contention that, as the owner, she shared kitchen and bathroom facilities with the tenant. Section 4 (c) of the Act states that the Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

After a careful consideration of the evidence, I find that this dispute does fall under the jurisdiction of the Residential Tenancy Act. In reaching this conclusion, I considered whether or not the parties shared the kitchen or bathroom in the lower suite and I cannot conclude that they do upon a balance of probabilities.

The landlord said that she occasionally puts potatoes in the oven in the lower level; however she did not contend that she had any cooking tools, utensils, cookware, food, refrigerator contents, dish cleaning soaps or any other item normally associated with using a kitchen. I accept the tenant's testimony that he has never witnessed the landlord using the kitchen or seen any signs of the landlord cooking in the kitchen or of using the bathroom facilities.

There is no dispute that the landlord has her own kitchen and bathroom facilities on the upper two floors.

I therefore find the landlord submitted insufficient evidence to prove that she shared the kitchen and bathroom facilities with the tenant. I find the tenancy was a single room occupancy and applicable under the Act.

As I have found that the Act applies to this dispute, I find that I have authority to make a decision on the parties' applications, as follows:

In a claim for damage or loss under the Act or tenancy agreement, 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

claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

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

Analysis on tenant's monetary claim

Security deposit-

Under section 38 of the Act, at the end of a tenancy a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. If a landlord fails to comply and the tenant's right to the security deposit has not been extinguished, then the landlord must pay the tenant double the security deposit.

In the case before me, the undisputed evidence shows that the tenancy ended on November 30, 2012. The evidence also shows that the landlord had the tenant's forwarding address at least by December 20, 2012, as this was the date the landlord sent a cheque to the tenant returning a portion of his security deposit. There is no evidence that the tenant agreed a deduction from his security deposit and the landlord did not make an application claiming against the security deposit as her application related to other issues.

Based on the above, I find that the tenant is entitled to a return of his security deposit, doubled, pursuant to Section 38(6) of the *Act*, less the amount the landlord has previously returned. I therefore find the tenant is entitled to a monetary award of \$325.00, comprised of his security deposit of \$225.00, doubled to \$450.00, less \$125.00 previously returned to the tenant.

Quiet enjoyment-

I find the tenant submitted insufficient evidence to justify a monetary award for a loss of quiet enjoyment, particularly as the tenant failed to submit proof that he notified the landlord in writing of an issue, allowing the landlord a reasonable amount of time to address that issue.

Additionally, I also considered that the tenant failed to include particulars as to how he calculated the amount he claimed.

I therefore dismiss the tenant's claim for \$3000.00.

Overpayment of rent-

Sections 40 through 43 of the Act address the issue of rent increases. A landlord may not increase the rent more than allowable by the Residential Tenancy Regulation (4.3% in 2012,) without the tenant's written consent.

In the case before me, the landlord was allowed to increase the rent by \$19.35, pending proper written notification; yet she increased the rent for one month by \$50.00, before lowering it to the original amount. I therefore find that the notice was invalid and that the tenant overpaid rent by \$50.00 for May 2012, and he is entitled to be reimbursed that amount.

I therefore find the tenant is entitled to a monetary award of \$50.00.

Missing items-

I find the tenant failed to submit proof that the landlord was responsible for missing items or the value of any such items.

I therefore find the tenant submitted insufficient evidence to justify an award of \$99.00 and dismiss his claim for that amount.

I find the tenant is entitled to a total monetary award of \$375.00, for a return of his security deposit as described above in the amount of \$325.00 and for overpayment of rent of \$50.00.

Analysis on Landlord's monetary claim-

Broken tabletop glass and cleaning-

I find the landlord submitted insufficient evidence that the tenant broke the tabletop glass or left the rental unit in a state which required cleaning.

A key component in establishing a claim for damage is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Residential Tenancy Act deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me the landlord failed to meet her obligation under of the Act of completing the inspections and therefore there is no independent record of the condition of the rental unit at the start or at the end of the tenancy.

As such, there was no record that the tabletop glass was intact at the beginning of the tenancy or that the rental unit was left dirty at the end of the tenancy.

Additionally the landlord also failed to submit proof that she paid \$60.00 for cleaning.

Due to the landlord's insufficient evidence, I therefore dismiss her claim of \$143.56 for a broken tabletop glass and cleaning, without leave to reapply.

As I have dismissed the landlord's monetary claim, I dismiss her application and request for recovery of the filing fee.

Conclusion

The tenant has established a monetary claim of \$375.00.

I therefore grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act in the amount of \$375.00, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant 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. Costs of enforcement may be recoverable from the landlord.

The landlord's application is dismissed, 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* and is being mailed to both the applicant and the respondent.

Dated: March 22, 2013

Residential Tenancy Branch

