



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, 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 unpaid rent; damage to the rental unit; compensation for damage or loss under the Act, to retain the security and pet deposits 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. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$1,100.00 as unpaid rent?

Is the landlord entitled to compensation for damage or loss under the Act in the sum of \$34.70?

May the landlord retain the \$500.00 security deposit and \$300.00 pet deposit in partial satisfaction of the claim?

Is the landlord entitled to filing fee costs?

Background and Evidence

The fixed-term tenancy commenced on September 1, 2012 and was to end effective October 31, 2012, with the tenant vacating the unit. A security deposit in the sum of \$500.00 and a pet deposit in the sum of \$300.00 were paid. A copy of the tenancy agreement was supplied as evidence.

The parties agreed that the tenant did not vacate the unit on October 31, 2012 and that she gave the landlord written Notice ending the tenancy effective November 30, 2012.

The parties also agreed that the tenant placed a stop payment on the November rent cheque. The tenant confirmed that on November 11, 2012 the tenant received a 10 Day Notice to End Tenancy for Unpaid Rent. The tenant confirmed she did not pay the rent and that she vacated the unit on November 18, 2012. The landlord said she had accepted the November payment for use and occupancy only.

The landlord supplied a copy of a Returned Item Notice issued by her financial institution on November 8, 2012; indicating that the November 1, 2012 rent cheque was returned as NSF. The landlord has claimed compensation for the \$7.00 fee that was charged by the bank, recorded on the item notice.

A move-in condition inspection report was completed on May 31, 2012; at the start of a previous fixed-term tenancy. On November 17, 2012 a move-in out inspection was completed; a copy of the report was supplied as evidence.

The report indicated that at the end of the tenancy the screen was coming out of the frame of the screen door. The section of the report where the tenant can agree or disagree shows that both boxes were marked. The tenant did not agree that any deduction could be made from the deposits. The landlord supplied a copy of a November 19, 2012 invoice for screen repair in the sum of \$27.70. The landlord believed the tenant's dogs caused this damage and she has claimed against the pet deposit for this sum.

The tenant was not sure how the damage to the screen was caused; she said it might have been caused by her dogs. The tenant had looked into having the screen repaired.

The tenant said that the landlord had threatened to evict her at the end of October and that the landlord would not allow her to stay in the unit.

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.

Based on the testimony of the tenant and the evidence before me indicating the November 2012 rent cheque was returned as NSF, I find that the landlord is entitled to compensation in the sum of \$1,100.00. As a term of the tenancy agreement, the tenant was required to vacate the unit effective October 31, 2012. I find that the tenant over-held until November 18, 2012. At this point it was not reasonable to expect the landlord

could have located a new occupant in November; resulting in a loss of November 2012 rent revenue. Whether there was agreement between the parties or not, the tenant paid rent, the landlord accepted the rent and payment was not successfully completed. As the tenant occupied the unit she must pay rent.

I find that the landlord is entitled to compensation in the sum of \$27.70 for repair of the damaged screen. From the evidence before me this damage was caused during the tenancy and was not the result of normal wear and tear. The tenant submitted that her dogs could have caused this damage and I have accepted that this was likely.

I find that the landlord is entitled to compensation in the sum of \$7.00 for the loss suffered as the result of the tenant's failure to pay November rent. The landlord provided verification of the fee charged by her bank, as a result of a cheque issued by the tenant.

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

I find that the landlord is entitled to retain the tenant's security and pet deposits in the sum of \$800.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order in the sum of \$384.70 (\$1,100.00 + \$27.70 + \$7.00 + \$50.00; less the deposits.) 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 in the sum of \$1,184.70.

The landlord may retain the security and pet deposits in partial satisfaction of the claim.

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: March 07, 2013

Residential Tenancy Branch

