



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bayside Property Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC, MNSD, FF / MNSD

Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; and ii) by the tenant for a monetary order as compensation for return of the security deposit plus interest. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, tenancy began on April 15, 2010. At the start of tenancy, monthly rent was \$750.00 and monthly parking was \$20.00; both are due and payable in advance on the first day of each month. A security deposit of \$375.00 was collected on March 19, 2010. At some point during the tenancy rent was increased by \$10.00 to \$760.00, while the cost of parking remained unchanged. A move-in condition inspection report was completed with the participation of both parties.

Evidence submitted by the tenant includes a copy of a hand written letter (the "notice letter") dated September 13, 2012, in which the tenant gives notice to end tenancy effective October 31, 2012. The tenant testified that he wrote his notice letter at the unit in September 2012, and made a copy for his own records at his office. The tenant testified that he then folded the original notice letter around his rent cheque for October, and put them both through the mail slot at the building manager's office.

The landlord's agent (who is also the building manager) testified that she could not recall ever receiving the tenant's notice letter in the office mail box. She also testified

that she is the only one with access to the mail box in which items inserted through the office mail slot are collected. On the contrary, the landlord's agent testified that the landlord first saw the tenant's letter of September 13, 2012 when he provided a copy along with his letter of January 7, 2012; the tenant's January letter includes his forwarding address and a request for the return of his security deposit.

Evidence submitted by the landlord includes a letter to the tenant from the property manager dated October 25, 2012. In this letter the property manager informs the tenant that the building manager informed her on October 23, 2012 of his intent to end tenancy effective October 31, 2012. In the property manager's letter, she also advises the tenant that the building manager had informed her of the tenant's claim that a notice letter had been delivered in September. In her letter the property manager requests that the tenant provide a copy of such a notice letter, and proof "that it was delivered to either the Caretaker or [corporate name of landlord] as of September 30, 2012." The tenant did not subsequently provide the landlord with a copy of the subject notice letter until he corresponded with the landlord by way of his letter of January 7, 2013. The tenant testified that he was too upset to provide a copy of his notice letter sooner.

A move-out condition inspection report was completed by the landlord without the participation of the tenant. The tenant claims he was not residing full time in the unit during October and was likely away during times proposed by the landlord for completing the move-out condition inspection and report.

In the tenant's letter to the landlord of January 7, 2013, as previously mentioned, the tenant requested the return of his security deposit and provided a forwarding address. The landlord testified that this particular letter was received on January 11, 2013. The landlord filed an application for dispute resolution on January 25, 2013, and the tenant's application for dispute resolution was later filed on February 12, 2013.

The landlord's agent testified that despite advertising, new renters were not found until effective February 1, 2013. Documentary evidence includes printouts of online advertising on craigslist. The landlord argues that as the tenant failed to provide proper notice, he is responsible for the landlord's loss of rental income for November 2012.

As well, the landlord seeks compensation for the cost of curtain cleaning in the unit. The tenant does not dispute that the curtains were not cleaned at the end of tenancy. The landlord's agent testified that with the exception of the curtains the unit was left reasonably clean.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and testimony, the respective claims and my findings around each are set out below.

TENANT

\$870.00 (\$770.00 + \$100.00): *return of security deposit plus interest*

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days of the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit, or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

I find that the tenant provided his forwarding address by letter dated January 7, 2013. I accept the testimony of the landlord's agent that the tenant's letter was received on January 11, 2013. The landlord's application for dispute resolution, which included an application to retain the security deposit, was filed on January 25, 2013. In the result, I find that the landlord's application to retain the security deposit was filed within 15 days after receiving the tenant's forwarding address. Accordingly, in the event the tenant were to establish entitlement to repayment of his security deposit, I find there would be no entitlement to repayment of double the original amount of the deposit.

As to interest, I find that even if the tenant were to establish entitlement to repayment of his original security deposit, no interest would have accrued. This matter will be addressed at greater length below.

LANDLORD

\$780.00 (\$760.00 + \$20.00): *loss of rental income and parking for November 2012.*

Section 45 of the Act speaks to **Tenant's notice**, in part as follows:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In summary, on a balance of probabilities I prefer the landlord's evidence over the tenant's evidence where it concerns delivery of the tenant's notice letter dated September 13, 2012. Specifically, I find it more likely than not that the tenant's letter was not deposited into the building manager's mail box before September 30, 2012.

I note, for example, the absence of a timely response by the tenant to the landlord's letter of October 25, 2012, in which the landlord requests a copy of the tenant's notice letter. It was not until January 2013 when the tenant undertook to provide what he claims is a copy of the notice letter written and delivered in September 2012.

Further, I note inconsistencies and inaccuracies in the tenant's documentary submissions; in his application, for example, he claims that a security deposit of \$770.00 was paid, when the tenancy agreement documents that it was \$375.00.

I also note the tenant's claim in his application that the security deposit was collected on April 15, 2011, when the tenancy agreement documents that it was March 19, 2010. Further, in his letter of January 7, 2013 the tenant cites yet another date on which the security deposit was collected: April 15, 2010.

In regard to interest claimed by the tenant on his security deposit, I note in his application a claim of entitlement to \$100.00 on a security deposit of \$770.00. Indeed, even if the security deposit collected was \$770.00 (versus \$375.00 documented in the tenancy agreement), pursuant to the deposit interest calculator on the Branch website, interest calculated from a collection date of March 19, 2010 would total \$00.00.

At odds with the figures set out immediately above, I note in the tenant's letter of January 7, 2013, a claim for interest in yet a different amount which is \$58.00 (\$828.00 - \$770.00).

Section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement**:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Following from all the above, I find there is insufficient evidence that the tenant provided notice to end tenancy as required by section 45 of the Act. I further find that the landlord sought to mitigate the loss of rental income for November 2012 by advertising for new renters in a timely manner, after determining that the tenant planned to end tenancy effective October 31, 2012. In the result, I find that the landlord has established entitlement to compensation in the full amount claimed.

\$55.00: *cleaning of drapes.*

Clause 23 in the tenancy agreement provides as follows:

23. CARPETS AND WINDOW COVERINGS. The tenant is responsible for periodic cleaning of carpets and window coverings provided by the landlord. While professional cleaning is recommended at all times, if the carpets and window coverings are new or professionally cleaned at the start of the tenancy, the tenant will pay for professional cleaning at the end of the tenancy.

Further, Residential Tenancy Policy Guideline # 1 speaks to "Landlord & Tenant – Responsibility for Residential Premises," and under the heading INTERNAL WINDOW COVERINGS, provides in part:

3. The tenant is expected to leave the internal window coverings clean when he or she vacates. The tenant should check with the landlord before cleaning in case there are any special cleaning instructions. The tenant is not responsible for water stains due to inadequate windows.

Further to all the above, the tenant does not dispute that he did not clean the window coverings at the end of tenancy. In the result, I find that the landlord has established entitlement to the full amount claimed.

\$50.00: *filing fee.*

As the landlord has succeeded with this application, I find that the landlord has established entitlement to recovery of the full filing fee.

Sub-total: **\$885.00** (\$780.00 + \$55.00 + \$50.00).

I order that the landlord retain the security deposit of **\$375.00**, and I grant the landlord a **monetary order** under section 67 of the Act for the balance owed of **\$510.00** (\$885.00 - \$375.00).

Conclusion

The tenant's application is hereby dismissed.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$510.00**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

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: April 22, 2013

Residential Tenancy Branch