



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: RP, ERP, MNSD, RR, MNR, LAT, FF
For the landlord: MNSD, FF

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 tenant applied for a return of her security deposit, for an order allowing a reduction in rent, a monetary order for costs of emergency repairs, an order requiring the landlord to make emergency repairs and repairs, an order authorizing the tenant to change the locks to the rental unit, and for recovery of the filing fee.

The landlord applied for authority to retain the tenant’s security deposit 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, 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 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.

Preliminary issue-The tenant asked for an order for repairs and emergency repairs, a rent reduction, and authority to change the locks on the rental unit; however the tenancy ended on December 28, 2012, three months prior to the tenant’s application for dispute resolution. As these are issues for remedy while a tenancy is ongoing, I have amended the tenant’s application excluding such requests. The tenant confirmed that she misunderstood the application.

Preliminary issue #2-At the end of the hearing, the landlord asked about his witness providing testimony; however, I concluded that it was not necessary to hear from the landlord's witness to make my determination of the applications. The landlord said the witness would speak of the good condition of the rental unit.

Issue(s) to be Decided

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

Background and Evidence

I heard undisputed evidence that the tenant moved into the rental unit on or about November 19, 2012, and moved out on or about December 28, 2012.

The parties confirmed there is no written tenancy agreement; however the undisputed evidence shows that monthly rent was \$850 and the tenant paid a security deposit of \$425 at the beginning of the tenancy.

The parties also agree there are no condition inspection reports, either a move-in or move-out report.

The rental unit was in the lower suite of a home, with the landlord residing in the upper suite.

Tenant's application-The tenant's monetary claim is \$2275.06, comprised of her security deposit of \$425, doubled to \$850, \$566 for rent from November 1-19, duct cleaning for the dryer for \$84, a duct hose for \$5.24, a locksmith for \$77.69, a ceiling fan for \$112, installation of the fan for \$70, a bathtub hose and installation for \$29.99, tax of \$3.60, and a broken towel rack for \$33.54.

The balance of the tenant's monetary claim was comprised of her labour for cleaning and small repairs to the rental unit.

Issue #1-In support of her application, the tenant said that the landlord has not returned her security deposit, and therefore she is entitled to a monetary order for double her security deposit.

In response to my question, the tenant said she provided the landlord with her written forwarding address with her application for dispute resolution. The tenant's evidence shows that the tenant sent to the landlord her Notice of Hearing letter and application via registered mail on April 3, 2013.

In response, the landlord said that he was unaware of the tenant's new address until he received the tenant's application. The landlord filed his application for dispute resolution on April 10, 2013.

*Issue #2-*As to the tenant's request for rent for November 1-19, the tenant said the landlord bullied her into paying rent for all of November, when she did not need the rental unit until November 19, 2012. The tenant explained that the bullying included verbal abuse and phone calls.

In response, the landlord said that he informed the tenant that the rental period for the suite was from the first day of the month until the last day of the month, and that he received rent for November on October 26.

The landlord denied bullying the tenant.

*Issue #3-*As to the tenant's request for compensation for the locksmith, the tenant said she was out one day for a walk, and upon her return the door lock was broken. The tenant said she did not have her mobile phone and could not get into the rental unit. The tenant said that at the time, the landlord was out of the country, and was unable to contact him.

The tenant also said that the landlord had assured her the door lock was functioning properly.

As the tenant was unable to locate the landlord, she believed an emergency existed so that she could access her rental unit.

In response the landlord did not agree that the lock was broken.

In response to my question, the landlord confirmed that he did not have posted in a conspicuous place on premises, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs. The landlord argued that the tenant had his mobile phone number and that she did not contact him.

*Issue #4-*The tenant maintained that the dryer duct required a cleaning, as there were bird's nest in the duct, presenting a danger.

In response, the landlord said that he used the washer and dryer before he left on holiday, and that both worked fine.

As to the balance of the claim, the tenant submitted that the rental unit was not clean to her standards or ready for occupancy, and as she likes to live in a clean condition, it required cleaning.

The landlord countered, saying that the suite was nice and in good condition. The landlord suggested that the tenant informed him it was a smart meter making her ill, not the condition of the rental unit.

Landlord's application-The landlord's monetary claim is \$425; however, the landlord further listed that he was requesting the rent for January 2013, which is \$850. The landlord deducted the tenant's security deposit from his claim, arriving at the figure of \$425.

In support of his application, the landlord argued that he was entitled to receive compensation for loss of rent revenue for January due to the tenant's insufficient notice that she was ending the tenancy.

In response to my question, the landlord said that he received the tenant's emailed notice, dated on December 15 the same day. I note that the notice was emailed from the tenant to the landlord's witness, with the subject line reading "Kindly pass on a message for me," and this email was provided into evidence by the landlord.

In response to my question, the landlord confirmed that he made no attempts to advertise the rental unit when he received the tenant's notice; however the landlord contradicted his earlier testimony, saying that he was not aware that the tenant had vacated until his return from holiday.

In response, the tenant said that she sent the email to the landlord's witness, as she had dealt with him during the tenancy and she had no address or email address for the landlord.

The landlord agreed he had no address or computer, as he was traveling in his motor home.

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, 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.

Tenant's application-

Section 38(1) of the *Act* requires a landlord 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 receiving the tenant's forwarding address in writing or the end of the tenancy, whichever is later. Section 38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the security deposit.

In this case, the tenant confirmed that the landlord was first provided with her forwarding address in her application for dispute resolution. I do not find that the transmission of a forwarding address in an application for dispute resolution meets the requirements for delivery of documents pursuant to section 88 of the *Act*. At any rate, the landlord filed an application for dispute resolution claiming against the deposit within 15 days of receiving the tenant's application.

As a security deposit is held in trust by the landlord for the tenant's benefit, I find the tenant is entitled to its return. However, due to the tenant's failure to comply with his obligation under the *Act* that she provide the landlord with her written forwarding address in a manner complying with section 88 of the *Act*, I find the tenant is not entitled to double that amount.

I find the tenant is entitled to a monetary award for \$425.

As to the issue of a return of the rent the tenant paid for November 1-19, 2012, I find the tenant submitted insufficient evidence that she was bullied into agreeing to pay rent for the entire month of November. I have no evidence to prove that the tenant did not otherwise enter into a tenancy agreement in an arm's length transaction. I therefore dismiss the tenant's claim for \$566.

As to the issue of reimbursement for a locksmith charge, section 33 of the *Act* defines an emergency repair to include damaged or defective locks that give access to a rental unit. As such, I find that broken lock was an emergency repair.

I next considered whether the tenant was entitled to make the emergency repairs herself, given that, under section 33, the tenant must make 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs.

While I do not find that the tenant made any effort to contact the landlord, I also find that the landlord failed to comply with section 33 by leaving the tenant a contact for emergency repairs, especially in light of his absence from the country.

I find that the tenant was entitled to make the emergency repairs and I therefore find she is entitled to a monetary award of \$77.69 as shown by her receipt.

As to the tenant's request for a dryer duct cleaning and all other cleaning listed in her application, I find these are not emergency repairs or even necessary repairs. I find it was the tenant's choice to make the repairs or provide cleaning and I cannot hold the landlord responsible for choices made by the tenant.

Even in the absence of a condition inspection report, the tenant did not provide evidence that she was unable to view the condition of the rental unit prior to agreeing to the tenancy. I therefore find the tenant submitted insufficient evidence to support her claim for compensation for cleaning and small repairs, and I dismiss her monetary claim for these items.

I find the tenant's application had at least partial merit and I award her recovery of the filing fee of \$50.

Due to the above, I find the tenant has proven a total monetary claim of \$552.69, comprised of her security deposit of \$425, a locksmith charge of \$77.69, and the filing fee of \$50.

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 this case, I accept that the tenant provided insufficient notice to end the tenancy early, by her failure to give notice in writing at least one clear month before the effective date of the notice to end before the next rent payment was due.

However, a landlord cannot sit idly by before making a claim for loss. I find that the landlord's admission that he did nothing to advertise or market the rental unit to be an admission that the landlord failed to take any steps to minimize his loss, which is step 4 of his burden of proof.

I therefore dismiss the landlord's claim for loss of revenue for January 2013 for \$850, without leave to reapply.

Conclusion

The tenant's application is granted in part as she has proven a monetary claim of \$552.69.

I therefore grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act in the amount of \$552.69, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of enforcement may be recovered 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*.

Dated: April 25, 2013

Residential Tenancy Branch