



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNR, MND, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss, unpaid rent, and damage to the rental unit, for authority to retain the tenants' security deposit and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The landlord served the Notice of Hearing and their application for dispute resolution to all three tenants to the same address given by tenant CC at the move out inspection. As the tenants were joint tenants, all equally or severally responsible for the rights and responsibilities of the tenancy, I accept that the address given by CC was applicable to all three tenants.

The evidence was discussed and no party raised any issue regarding service of the evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

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 issue-The landlord improperly listed the name of tenant, CC, using the tenant's surname as her given name, and vice versa.

Issue(s) to be Decided

Is the landlord entitled to retain the tenants' security deposit and pet damage deposit, a monetary order, and to recover the filing fee?

Background and Evidence

The undisputed evidence shows that this tenancy began on July 9, 2012, ended on January 31, 2012, the monthly rent owed by the tenants was \$900 and the tenants paid a security deposit of \$450 and a pet damage deposit of \$200 at the beginning of the tenancy.

The written tenancy agreement provided by the landlord did not indicate the length of the tenancy.

The landlord has applied for a monetary order in the amount of \$1095, which is comprised of maintenance charges of \$195 and loss of revenue in the amount of \$900.

The landlord's relevant evidence included a condition inspection report, a tenancy agreement, and a document entitled "move in/move out/charge analysis."

In support of their application, the landlord testified that the tenants damaged the rental unit to an extent that the blinds were damaged and required replacing. The landlord said the blinds were new at the beginning of the tenancy.

In response to my question regarding the condition inspection report, as there were no remarks or notations about the condition of the rental unit contained on the report, either at the move-in or move-out dates, the landlord stated that if the report were left blank, this would mean there was nothing wrong with the rental unit at the beginning of the tenancy.

The landlord explained that the condition at the end of the tenancy was contained on the charge analysis document, which shows that the blind replacement totaled \$195.

I note that the condition inspection report did not list a move-out date, or the signature of the tenants, or of the landlord at the move-out.

As to the claim for loss of revenue, the landlord said that the tenants provided insufficient notice that they were ending the tenancy, and as such, they were unable to re-rent the rental unit for the beginning of February 2013. The landlord said that the rental unit was advertised and that it was re-rented effective February 20. The landlord said that he is now requesting a prorated loss of revenue for February.

In response to my question, the landlord said that the tenants' notice was in verbal form and was unsure of the date.

In response to the landlord's application, the tenant was not sure of any damage to the blinds and she questioned the landlord's contention that the blinds were new at the beginning of the tenancy.

The tenant agreed that she failed to provide written notice that she was ending the tenancy as she was a first time renter.

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, the landlord 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.

Maintenance charges-I dismiss the landlord's request for compensation for maintenance charges, for several reasons.

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 accordance with the Act and section 20 of the Residential Tenancy Branch Regulations. In the circumstances before me the landlord has failed to meet their obligation under of the Act of completing the inspection reports as required as there was no statement of the condition of the premises, no tenant signature for the move-in or move-out inspection, no landlord signature for the move-out inspection, and no move-out inspection date. There is also no independent record of the condition of the rental unit at the start and end of the tenancy.

In the absence of any other evidence, such as a properly completed condition inspection reports listing damage to the rental unit or photographs prior to and after the tenancy, I do not accept the landlord's claim for damages to the rental unit. The landlord has the burden of proof on the balance of probabilities and I find the landlord's evidence, or rather lack of compelling evidence, does not meet the burden of proof.

I also reviewed the charge analysis provided by the landlord, and cannot find that the tenant agreed to the move-out charges.

Even if the landlord was able to prove that the tenant agreed, further pursuant to section 38(5) of the Act, as the landlord had extinguished their right to claim against the tenants' security deposit, the landlord lost their right to obtain the tenants' consent to withhold any portion of their security deposit.

The landlord also failed to provide receipts or other proof of actual costs, step 3 of their burden of proof.

Due to the above, the landlord's claim for \$195 is dismissed without leave to reapply.

Loss of revenue- I have determined that the tenancy was on a month to month basis as the tenancy agreement did not indicate a fixed term.

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 the case before me, as the tenants failed to submit written notice that they were ending the tenancy, I find that the tenants submitted insufficient notice to end the tenancy as required under section 45 and is liable to the landlord for rent for the month of February 2013, under the terms of the tenancy agreement.

I am also satisfied that the landlord took reasonable steps to minimize their loss by marketing the rental unit for re-rent in a timely manner as the landlord secured a new tenant for February 20, 2013, reducing their loss of rent revenue.

I therefore find that the landlord has proven a monetary claim for loss of rent revenue for February 1-19, 2013, in the amount of \$562.21 ($\$900 \times 12 \text{ months} = \$10,800$ yearly rent $\div 365 \text{ days} = \29.59 daily rate $\times 19 \text{ days}$).

As the landlord's application contained merit, I allow recovery of the filing fee of \$50.

Due to the above, I find the landlord is entitled to a monetary award of \$612.21, comprised of loss of rent revenue in the amount of \$562.21 and the filing fee of \$50.

I direct the landlord to retain the amount of \$612.21 from the tenants' security deposit of \$450 and the pet damage deposit of \$200, and direct that they return the balance of \$37.79 forthwith to the tenants.

Conclusion

The landlord's application is granted in part, they have been given a monetary award of \$612.21, have been directed to retain this amount from the tenants' security deposit and pet damage deposit, and ordered to return the balance of \$37.79 to the tenants.

I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act in the amount of \$37.79, which I have enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants 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.

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: May 1, 2013

Residential Tenancy Branch

