



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FAIRFAX MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenant: MNDC MNSD, RR, O FF

Landlord: MNR, MND, MNDC, MNSD, O, OPB, OPC, OPR, FF

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenant.

The Landlords filed seeking an Order of Possession, a monetary order for unpaid rent, compensation for damage to the unit site or property, compensation for loss or damage under the Act, regulations or tenancy agreement, to recover the filing fee for this proceeding, to retain the Tenant's security and pet deposit and for other considerations.

The Tenant filed for compensation for loss or damage under the Act, regulations or tenancy agreement, to recover the security and pet deposit, for a rent reduction, to recover the filing fee for this proceeding and for other considerations.

Service of the hearing documents by the Landlords to the Tenant were done by registered mail on March 21, 2013 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlords were done by registered mail on March 8, 2013 and the amended application dated May 13, 2013 was served by registered mail on May 21, 2013 in accordance with section 89 of the Act.

Both parties confirmed the receipt of the other parties' hearing package.

At the start of the conference call the parties agreed the Tenant moved out of the unit on March 3, 2013 and the tenancy ended on March 6, 2013. As the Landlord has possession of the unit the application for an Order of Possession is withdrawn.

Issues to be Decided

Landlord:

1. Is there unpaid rent and if so how much?
2. Are the Landlords entitled to compensation for unpaid rent and if so how much?
3. Is there loss or damage to the Landlord and if so is the Landlord entitled to compensation?
4. Is there damage to the unit and if so is the Landlord entitled to compensation?
5. Is the Landlord entitled to retain the Tenants deposits?
6. What other considerations are there?

Tenant:

1. Is there a loss or damage to the Tenant and is the Tenant entitled to compensation for the loss or damage?
2. Is the Tenant entitled to recover the security and pet deposits?
3. Is the Tenant entitled to a rent reduction?
4. What other considerations are there?

Background and Evidence

This tenancy started on May 1, 2012 as a fixed term tenancy with an expiry date of April 30, 2013. Rent is \$1,000.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$500.00 and a pet deposit of \$200.00 both in advance of the tenancy. A move in condition inspection report was completed and signed on April 28, 2012 and a move out condition inspection report was completed and signed on March 6, 2013. In the move out condition inspection report the Tenant acknowledges that \$140.00 will be deducted from the security deposit for the loss of a key and damage to a wall and she would not make any further claims against the Landlord. Both parties agreed the tenancy ended on March 6, 2013.

The Landlord said that the Tenant moved out of the unit on March 6, 2013 before the expiry date of April 30, 2013 of the fixed term tenancy agreement. As a result the Landlord is claiming rent or lost rental income for March, 2013 and April, 2013 in the amount of \$1,000.00 for each month for a total of \$2,000.00. In addition the Landlord is claiming for the damages agreed to on the move out condition inspection report of \$140.00 as well as an NSF bank charge of \$20.00 and a lost visitor's pass for \$50.00. The Landlord also requested to recover the \$50.00 filing fee for this proceeding.

The Tenant said she moved out of the rental unit because on February 2, 2013 she discovered a leak in the wall of the foundation of the rental unit. The Tenant said she reported the leak to the Landlord's agent on February 6, 2013 after a number of efforts to contact the Landlord's agent. The Tenant continued to say the Landlord sent a restoration company to the unit on February 8, 2013 and the restoration company cleaned the unit and put dehumidifier and fans into the rental unit to reduce the moisture in the unit. The Tenant said she co-operated with the clean up and restoration work for 11 days and then found it too difficult to deal with all the workers coming and going so she unplugged the dehumidifiers and fans and denied access to the workers. The Tenant said she lost the use of her bedroom and the bedroom bathroom. The Tenant said by the end of February, 2013 she did not want to continue the tenancy so she gave the Landlord her notice to end the tenancy on February 28, 2013 and she moved out of the unit on March 3, 2013. The Tenant continued to say she met with the Landlord on March 6, 2013 to complete the move out condition inspection and to return the keys to the Landlord.

The Tenant said that because of the leak in the unit, the water damage and the resulting mold in the unit she is making the following monetary claim against the Landlord:

1. Loss of use of the unit from February 8, 2013 to March 6, 2013 for \$500.00
2. Moving costs of \$125.00
3. Storage costs of \$296.00
4. Utility hook up costs of \$59.00
5. Change of mailing costs of \$54.00
6. An estimate of additional hydro costs due to the dehumidifiers and fans of \$88.00
7. Loss of washing machine due to water issues of \$40.00
8. Double her security deposit in the amount of $2 \times 560.00 = \$1,120.00$
9. Extra telus fees of \$40.00
10. Pictures for the hearing in the amount of \$5.00
11. Mailing fee for the hearing of \$13.00
12. A doctor's note regarding the health issues in the amount of \$20.00.

The Tenant said her total claim is \$2,383.00 plus the \$50.00 filing fee.

The Tenant continued to say she incurred these expenses because she did not want to move, but she could not continue to live in the rental unit in the conditions that she had to endure in February, 2013.

The Tenant said in closing that this was a very difficult time for her that she is frustrated by what has happened and she believes the Landlord owes her compensation for the inconvenience that she has had to deal with.

The Landlord said in closing that she tried to respond to the Tenant's requests and the issues in the rental unit as best as she could and that the leak in the foundation was no one's fault it just happened. The Landlord continued to say the claims she is making are based on the fixed term tenancy agreement and what the Tenant has already agreed to in the move out condition inspection.

Analysis

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45 of the Act says a Tenant may end a fixed term tenancy **not earlier than the date specified in the tenancy agreement** and it must be with written notice at least one month prior to the date that rent is payable or with the agreement of the Landlord.

The Tenant did not have the right to end the tenancy on March 6, 2013 and the Tenant did not give the Landlords proper notice to end the tenancy; therefore the Tenant does not have the right under the Act to withhold part or all of the rent; therefore I find the Tenant is responsible for the rent of \$1,000.00 for March, 2013 and \$1,000.00 for April, 2013. I award the Landlord unpaid rent in the amount of \$2,000.00.

Further I also award the Landlord the amount of \$140.00 for the lost key and damage to the wall that is indicated on the move out condition inspection report dated March 6, 2013, agreed to by both parties and signed by both parties.

For a monetary claim for damage or loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

The Landlord has submitted an invoice for the NSF bank charge, but I was unable to find a receipt for the lost visitors pass; therefore I award the NSF fee of \$20.00 to the Landlord and dismiss the \$50.00 lost visitors pass due to lack of evidence.

With respect to the Tenant's claim I accept both the Tenant's and the Landlord's testimony that the Tenant lost the use of the bedroom and bedroom bathroom for the period of February 8, 2013 to March 6, 2013 the end of the tenancy. Consequently I find the Tenant has established grounds for loss of facilities (the bedroom and bathroom) that were provided in the tenancy agreement. I award the Tenant \$500.00 or ½ a month's rent for loss of use of the bedroom and bathroom.

Further as the Tenant was seriously inconvenienced by the comings and goings of worker and the clean up dehumidifiers and fans; I find the Tenant has established grounds for the loss of quiet enjoyment of the rental unit for the last month that she lived in the unit. I award the Tenant the equivalent of one half a month's rent of \$500.00 for loss of quiet enjoyment of the rental unit.

In addition the Tenant has claimed a number of items which are related to her move. Moving costs are the responsibility of a Tenant as the Tenant chose to move out and the Tenant would have these expenses at the end of a normal tenancy. I find the Landlord is not responsible for the claims relating to the Tenant's moving costs as these claims are the Tenant's responsibility and because the Tenant has not provide verification of the all the other claims in the form of receipts or the claims do not relate to the tenancy but for the preparation for the hearing; I dismiss the Tenant's claims for moving costs, storage costs, utility expenses, mail expenses, additional hydro expenses, the washing machine expenses, telephone expenses, mail expenses and the Doctor note costs without leave to reapply.

In addition I find that since both parties were only partially successful in this matter, I order both parties to bear the cost of the filing fee of \$50.00 which both parties have already paid.

Policy guideline 17 states that in a case that both parties are successful in a monetary claim the Arbitrator can SET OFF the two claims against each other with the balance going to the applicant with the largest claim. In this situation the SET OFF is as follows:

Landlord's award	Unpaid rent	\$2,000.00	
	Damage and loss	\$ 140.00	
	NSF costs	\$ 20.00	
	Subtotal		\$2,160.00
Tenant's award	Loss of facilities	\$ 500.00	
	Loss of quiet enjoyment	\$ 500.00	
	Subtotal		\$1000.00
Balance owing to Landlord			\$1,160.00
Less the Security Deposit		\$500.00	
Pet Deposit		\$200.00	
Subtotal			\$ 700.00
Balance due to the Landlord from the Tenant			\$ 460.00

As there is a balance owing to the Landlord I order the Landlord to retain the Tenant's security deposit of \$500.00 and the pet deposit of \$200.00 as partial payment of the rent arrears.

Conclusion

A Monetary Order in the amount of \$460.00 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia

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 29, 2013

Residential Tenancy Branch