



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Coquitlam Kinsmen Housing
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNR, MNDC, FF

Introduction

This was an application by the landlord for a monetary order under the *Residential Tenancy Act* (the Act) for unpaid rent and damage and loss to the rental unit.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to a monetary order in the amount claimed?

Background and Evidence

The undisputed relevant testimony in this matter is that the tenancy started September 2007 and ended June 30, 2012. Rent was \$529.00 per month. At the start of the tenancy the parties conducted a move in inspection. The landlord testified that at the end of the tenancy they *did not* conduct a move out inspection. I do not have benefit of a written assessment or report respecting the conditions of the rental unit at the start or end of the tenancy.

The landlord is claiming that the tenant left the rental unit with a bed box spring in the unit and paid \$35.00 to dispose of it. The landlord testified that they hired a cleaner to clean the unit - to the landlord's satisfaction. However, the landlord acknowledged that the rental unit was left *reasonably clean*.

The landlord claims that at the end of the tenancy the tenant owed \$257.66 in unpaid rent. The landlord provided a letter from their chartered accounting firm with the sole sentence, *"Please be advised that the total rent contributions owing from the above noted tenant as at June 30, 2012 was \$257.66."* The landlord explained that the stated amount was likely the result of various factors, including a rise in the payable rent by \$40.00 per month effective July 01, 2011, upon annual re-assessment of the subsidized payable rent. They explained an accompanying factor may have been that the tenant may have overpaid rent and that the resulting \$257.66 is a result of the two factors. The landlord did not provide any other supporting or corroborating evidence to explain the claimed amount of unpaid rent. The tenant testified they were not aware of a rent differential effective July 01, 2011, and if it were true the differential would amount to \$480.00 to the end of the tenancy. The tenant also testified that they have no basis to think they ever overpaid rent as it was provided monthly by social assistance directly to the landlord in the amount of \$529.00 per month. The tenant was, otherwise, at a loss to explain the landlord's claim.

Analysis

Under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following test established by **Section 7** of the *Act*:

1. Proof the damage or the loss exists,
2. Proof the damage or loss were the result, *solely, of the actions or neglect of the other party (the tenant)* in violation of the *Act* or agreement
3. *Verification* of the actual amount required to compensate for the claimed loss or rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the claimed loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

Section 37 of the Act states the tenant must leave the rental unit *reasonably clean and undamaged except for reasonable wear and tear*. The landlord acknowledged this to be the case. As a result, **I dismiss** the landlord's claim for cleaning, without leave to reapply. The tenant acknowledges they left behind a bed box spring which the landlord had to pay to dispose. As a result, I grant the landlord \$35.00 for disposal of the box spring as well as \$15.00 for the associated labour, to the sum of \$50.00.

The landlord relies on their document evidence to support the claim the tenant owes unpaid rent. I find that it was available to the landlord to provide corroborating evidence as to the nature of the purported rental shortfall, but did not. I find the landlord's evidence is insufficient to support how they arrived at the claimed amount. On the face of the evidence, I find the landlord has not met the above test for loss. As a result, **I dismiss** the landlord's application for unpaid rent, without leave to reapply.

As the landlord was partially successful in their application, I grant the landlord a portion of their filing fee in the amount of \$25.00 – for a sum award of **\$75.00**, without leave to reapply.

Conclusion

The landlord's claim is, in part, **granted**, without leave to reapply.

I grant the landlord an Order under Section 67 of the Act for the amount of **\$75.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on both parties.

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 22, 2013

Residential Tenancy Branch

