



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

Introduction

This was the reconvened hearing dealing 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 hearing was originally convened on April 26, 2013, and adjourned due to issues involving service of the parties' evidence.

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

At the reconvened hearing, the tenant confirmed that the tenants had received the landlord's evidence; the tenant confirmed that the tenants did not submit evidence for the hearing. The tenant also confirmed that the absent tenant, LH, had received the landlord's application for dispute resolution and the reconvened hearing. I therefore find that the tenant LH was served notice of this hearing.

Thereafter all parties gave affirmed testimony, 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 landlords additionally requested an order of possession for the rental unit in their application for dispute resolution; however the landlord's own evidence shows that the tenancy had ended long before the landlord filed their application. I have therefore not considered this request.

Issue(s) to be Decided

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

Background and Evidence

The undisputed evidence shows that this, one year, fixed term tenancy began on June 1, 2012, that monthly rent was \$2600, and the tenants paid a security deposit of \$1300 and a pet damage deposit of \$1300 at the beginning of the tenancy.

As to the date the tenancy ended by the tenants vacating the rental unit, the landlord submitted that the tenants vacated by January 5, 2013, without notice and without leaving a forwarding address.

The tenant said he provided notice and vacated by January 1, 2013.

The landlord's application requested a monetary order in the amount of \$7014.27; at the hearing, the landlord requested that they additionally be reimbursed for extra registered mail expenses due to having to mail evidence to the tenants again.

The landlord's relevant documentary evidence and digital included a tenancy agreement, a condition inspection report, copies of rent cheques issued by the tenants, banking information, a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), dated January 2, 2013, a receipt from a home improvement store for a deadbolt and key, a receipt for cleaning, a receipt for carpet cleaning, a receipt for paint, a receipt for a wet broom, an invoice for repairs to a kitchen sink cartridge, and a DVD containing photos of the rental unit.

In response to my question, the tenant confirmed having received the DVD and being able to view the photos.

The landlord's monetary claim is as follows:

Outstanding rent, late fees	\$5300
Time spent to date	\$1000
Repairs	\$354.47
Fuel	\$80
New FOB	\$75
Parking Pass	\$50
Cost to have alarm retested	\$150
TOTAL	\$7014.27

Outstanding rent-In support of their application, the landlord testified that the tenants began paying rent later and later each month, that their rent cheques began bouncing, that some rent payments were paid in cash, and that ultimately the tenants failed to pay rent in December, and again in January 2013. The landlord also submitted that after failing to pay rent on January 1, 2013, the landlord issued the tenants a 10 Day Notice for unpaid rent and that the tenants vacated the rental unit on January 5, without notice to the landlord.

The tenant responded, submitting that he informed the landlord in December that he did not have rent for that month and that they should begin advertising the rental unit as he was vacating at the end of the month. The tenant said he moved out on January 1 or 2 and that the rental unit was cleaned.

Time spent to date; gas-The landlord claimed that this request was for time spent in "running around" to have the rental unit cleaned and ready to be put back on the market for rental. In further explanation the landlord said that this time was used in going back and forth to pick up keys and making sure that maintenance personnel had keys to enter the rental unit.

The landlord claimed that they are entitled to fuel expense due to having to go back and forth between their offices and the rental unit.

The tenant had no response to this issue.

Repairs-The landlord claimed that the damage left by the tenants caused them to incur expenses in making repairs to the rental unit.

The landlord referred to their photographic evidence on the DVD. The landlord also mentioned a spread sheet compiled by the landlord in support of their request for repairs and time spent, but this spread sheet was not submitted by the landlord and the landlord did not have a copy in front of them at the hearing.

Additionally, the landlord submitted receipts for the expenses.

In response, the tenant agreed that carpet cleaning was necessary, but that the faucet broke during the tenancy and was fixed by the landlord.

FOB, parking pass-The landlord submitted that the tenant did not return the FOB or a parking pass at the end of the tenancy, causing both to be replaced.

The tenant said the movers took the FOB and that he never received a parking pass.

Fire alarm retested-The landlords submitted that the Strata Corporation has the fire alarm retested every year and that due to the tenant never making himself available for the retesting, a special time had to be arranged, at a cost to the landlord.

The tenant said that the fire alarm was never retested.

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 party took reasonable measures to mitigate their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Outstanding rent, late fees-As to the issue of unpaid rent, Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord written notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and 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 other words, the tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term.

In the case before me, there was no dispute that the tenants failed to pay rent for December 2012.

The evidence shows that the tenants failed to give any written notice and that they vacated prior to the end of the fixed term, either that the tenants remained in the rental unit at least through January 1, 2013, according to the tenant, and January 5, 2013, according to the landlord. I find 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 December 2012 and January 2013, under the terms of the tenancy agreement.

I therefore find that the landlord has proven an entitlement to a monetary award for outstanding rent for those two months in the amount of \$5200.

As to the landlord's request for a late fee of \$50 each month, Residential Tenancy Branch Regulation #7 allows a maximum late fee of \$25 each month. I therefore find that the landlord is entitled to a total of \$50 for late fees for December and January.

I therefore find that the landlord has proven a total monetary claim of \$5250 for unpaid rent and late fees.

Time spent to date; gas; registered mail-As to the landlord's request for their time and fuel, I find that the landlord has chosen to incur costs that cannot be assumed by the tenant. I do not find the tenant to be responsible for the landlord choosing to expend time or running errands in renting the rental unit. The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of Act and not for costs incurred to conduct a landlord's business, such as traveling to the rental unit. Therefore, I find that the landlord may not claim for their time and fuel costs, as they are costs which are not named by the *Residential Tenancy Act*.

As to the landlord's added claim for registered mail expenses for this hearing to the landlord, the *Act* does not provide for the reimbursement of expenses related to disputes arising from tenancies other than the filing fee.

Due to the above, I dismiss the landlord's claim for \$1000 and registered mail expenses.

Repairs-In considering the landlord's request for repairs, it is necessary to weigh their standards against the requirements for tenants under the Act. In explanation, addendum 4 in the tenancy agreement requires that the tenants leave the rental unit in exactly the same condition as on the first day of the tenancy. Section 37 of the Act, however, states that the rental unit is to be left reasonably clean and that tenants are allowed reasonable wear and tear. Therefore this section of the tenancy agreement is not enforceable.

In reviewing the totality of the landlord's claim for repairs and the accompanying evidence, I find the landlord is entitled to carpet cleaning of \$90, as shown by their receipt and as agreed to by the tenant.

As to the charge for a deadbolt and a blank key, the landlord's evidence shows that the tenants were given 2 keys at the start of the tenancy and that 2 keys were returned. I therefore dismiss their claim for reimbursement of \$39.99 for the deadbolt and \$5.38 for the blank key.

As to the landlord's claim for \$120 for cleaning and repairs, the landlord submitted a receipt from the landlord. There was not an invoice or receipt from the cleaner or person making the repairs. Additionally there was not a breakdown of each of the charges and what repairs were made.

I find this evidence to be insufficient to support the total claim; however, I find a reasonable amount to clean and repair considering the landlord's other evidence to be \$75.

I have not allowed the landlord's claim for kitchen sink repair as the receipt shows that the work was done in November 2012, which occurred during the tenancy. I have no information that this repair was something other than a landlord's responsibility to make repairs to the rental unit.

I allow the landlord's claim for \$39.31 for paint.

Due to the above, I find the landlord has proven a claim for repairs and cleaning in the amount of \$204.31.

New FOB-I find the tenants were responsible for returning the FOB and that they did not do so. I therefore find the landlord's have proven this monetary claim in the amount of \$75.

Parking pass-I find the landlord submitted insufficient evidence that they have incurred an expense in this amount or that the tenant was ever issued a parking pass. I therefore dismiss their monetary claim for \$50.

Cost to have the alarm retested-I find the landlord submitted insufficient evidence that they have incurred a cost for having the alarm retested or that if so, the tenant was at fault for not being available.

I therefore dismiss the landlord's claim for \$150.

As the landlord's application contained merit, I allow recovery of the filing fee of \$100.

Due to the above, I find the landlord has proven a total monetary claim of \$5629.31, comprised of unpaid rent and late fees of \$5250, cleaning and repairs for \$204.31, a new FOB for \$75, and the filing fee of \$100.

I direct the landlord to retain the tenants' security deposit of \$1300 and the pet damage deposit of \$1300 in partial satisfaction of the monetary award.

I therefore grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$3029.31, which I have enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay after it is served upon them, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are advised that costs of enforcement are subject to recovery from the tenants.

Conclusion

The landlord's application has been granted in part, they have been granted a monetary award of 5629.31, they are directed to retain the tenants' security deposit and pet damage deposit of \$2600 in total, and are granted a monetary order for the balance due in the amount of \$3029.31.

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: June 7, 2013

Residential Tenancy Branch

