



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Imperial Apartments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant: O

For the landlord: MND, MNDS, MNDC, 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 the monthly rent paid for May 2013.

The landlord applied for authority to retain the tenant's security deposit, a monetary order for money owed or compensation for damage or loss and alleged damage to the rental unit, 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 relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, neither party raised any issue about service of their respective applications or the evidence. The tenant confirmed that he had received the landlord's documentary evidence and that he had not filed documentary evidence.

I have reviewed all relevant oral and written evidence before me which met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however I refer to only the evidence relevant to the issues and findings in this decision.

Issue(s) to be Decided

1. Is the tenant entitled to a return of the monthly rent paid for May 2013?
2. Is the landlord entitled to retain the tenant's security deposit, further monetary compensation, and to recover the filing fee?

Background and Evidence

The undisputed evidence is that this tenancy began on September 1, 2012, ended on April 29, 2013, monthly rent was \$600 and the tenant paid a security deposit of \$300 at the beginning of the tenancy.

Tenant's application-

The tenant's monetary claim is \$600, which is the amount paid to the landlord for the monthly rent for May 2013. The rent was automatically paid to the landlord from a government ministry.

In explanation, the tenant claimed that he gave the landlord two months' advance notice that he was vacating the rental unit sometime in April. The tenant confirmed that the notice to the landlord was verbal, and that the rent was sent to the landlord before he could redirect payment.

The tenant submitted that he was entitled to a return of his monthly rent as he supplied the landlord two months advance notice, that he did not live in the rental unit in May, and because intruders were constantly breaking into the rental unit, causing damage.

In response, the landlord denied receiving notice from the tenant that he was vacating and that the rental unit was being broken into. The landlord said that the tenant invited or allowed these individuals and there was no evidence of criminal activity as verified by their camera surveillance of the premises.

Landlord's application-

The landlord's monetary claim totals \$680, for carpet and suite cleaning for \$200, carpet burn repair for \$200, and furniture and mattress removal costs and dump fee for \$280.

The landlord's relevant documentary evidence included copies of photographs of the rental unit, a 1 page tenancy agreement, and a 1 page document said by the landlord to be an inspection report, but having the appearance of a computer screen shot, listing the expenses as noted in the landlord's monetary claim.

The landlord said that the tenant caused damage to the rental unit, and left some items of personal property behind, such as a mattress and other furniture. The landlord said that the 1 page document was the condition inspection report, which shows that on

move-in, the stove, “fridge,” cupboards, walls, floors, and fixtures were “clean.” These items were listed in a small column, and on move-out, these items were listed as “dirty” or needing a shampoo or carpet repair.

The document appears to be a computer screen display from the tenant’s account with the landlord, with blank boxes to be filled out, and had no display for the tenant to sign at the end of the tenancy.

The landlord also believed that the tenant would agree that he damaged the rental unit.

In response, the tenant denied damaging the rental unit, as this damage was caused by the intruders breaking into his rental unit.

The tenant also did agree that the carpet was burned.

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, which falls in sections 7 and 67, 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-

As to the issue of a return of the tenant’s rent paid for May, 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 written notice to end the tenancy.

In the case before me, the tenant never supplied written notice to the landlord that he was ending the tenancy and the landlord denied receiving the tenant's verbal notice two months in advance.

As the tenant vacated the rental unit on April 29, 2013, without giving written notice to the landlord as required under the Act, I find the tenant was still obligated to pay rent according to the terms of the tenancy agreement for the month of May 2013. I therefore find that the tenant submitted insufficient evidence that he is entitled to a return of \$600 paid to the landlord for the month of May and I therefore dismiss application without leave to reapply.

Landlord's application-

Under section 23 of the Act, a landlord is required to conduct an inspection of the premises and complete a condition inspection report in compliance with the Residential Tenancy Branch Regulation, in this case, section 20 listing the standard information which must be included.

In reviewing the document the landlord said was their condition inspection report, I find this document to be non-compliant with section 20, as to form and content and therefore deficient. As this document was deficient in that it did not accurately depict the state of the rental unit at the beginning of the tenancy, I could not rely on this report to confirm the state of the rental unit either before and after the tenancy ended.

There is also no independent record of the condition of the rental unit at the start of the tenancy.

While I accept that the tenant may have left some personal property in the rental unit and that the carpet was repaired, the landlord failed to submit proof that they have incurred a loss, such as through paid receipts or invoices, which is step 3 of their burden of proof.

Due to the above, I find the landlord submitted insufficient evidence of damage to the rental unit or a loss to the landlord and I dismiss their monetary claim of \$680, without leave to reapply.

As I have dismissed the landlord's application, I therefore dismiss their request for recovery of the filing fee.

As to the issue of the tenant's security deposit, which the landlord retained pending the outcome of their hearing, as I have dismissed the landlord's application claiming against the security deposit, I order that the landlord return the security deposit of \$300 to the tenant.

Conclusion

The tenant's application for monetary compensation is dismissed.

The landlord's application for monetary compensation is dismissed.

The landlord is ordered to return the tenant's security deposit of \$300.

I therefore grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act in the amount of \$300, 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. Costs of such 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: July 26, 2013

Residential Tenancy Branch

