



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MND, 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 unpaid rent and alleged damage to the rental unit, for authority to retain the tenants' security deposit and pet damage 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 evidence was discussed and the tenant acknowledged receiving the landlord's documentary evidence; the landlord contended that he had not received the tenants' documentary and digital evidence. When questioned, the tenant said that the landlord was sent their evidence the same day as it was mailed to the Residential Tenancy Branch ("RTB"), which I note was received on June 21, 2013. The tenant said that she used the same address as used by the landlord in his application for dispute resolution.

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 oral and documentary evidence 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-Although the landlord said that he had not received the documentary evidence of the tenants, I have accepted that evidence for consideration as it was a typewritten response, as restate by the tenant at the hearing.

Additionally, the tenants submitted photographs which were referred to during the hearing and the tenants' evidence ultimately was not the deciding factor as the landlord bore the burden of proof for his application.

Preliminary issue #2-The monetary claim listed in the landlord's application was \$900; however the landlord said that he had amended his application to include a request for an additional \$200 for cleaning, garbage disposal fee, and garbage removal. Although the tenant said that she did not receive an amended application, I have allowed the landlord's request for an amendment to include an additional \$200, as I considered it clear from the landlord's documentary evidence that it was his intent to ask for this amount.

Issue(s) to be Decided

Is the landlord entitled to retain the tenants' security deposit and pet damage deposit, for further monetary compensation, and to recover the filing fee?

Background and Evidence

The undisputed evidence shows that this one year, fixed term tenancy began April 1, 2012, ended on April 17, 2013, when the tenants vacated the rental unit, monthly rent was \$900, and the landlord collected a security deposit of \$450 and a pet damage deposit of \$450.

In support of his application, the landlord submitted that the tenants phoned him on March 28, 2013, to inform him that they would be vacating the rental unit by April 15, that they would not be able to pay rent for April, and that the tenants did vacate on April 17.

The landlord submitted that he never received written notice from the tenants of their intent to vacate, and that he is owed rent for April, in the amount of \$900.

As to his claim for \$200, the landlord said that this was the amount needed to clean the rental unit and remove the garbage, or "crap" as coined by the landlord.

In response to my questions about the invoice submitted by the landlord to show an expense of \$200, the landlord stated that it was an invoice he drafted himself to himself, as he owned a company. I note that the invoice did not mention a company's name, but only the name of the landlord. In the invoice the landlord claimed that one hour was

spent on cleaning the kitchen cabinets, 1 hour on cleaning the bathroom cabinets, 2 hours for garbage removal, and \$50 for a garbage disposal fee.

The landlord confirmed that he had not submitted a receipt for the garbage disposal fee and that there was not a move-in or move-out inspection report.

The landlord submitted further evidence that he received a written notice from the tenants on April 18, 2013, informing the landlord of their forwarding address.

The landlord's other documentary evidence included the tenancy agreement and copies of photographs of the yard.

Tenant's response-

The tenant acknowledged that they gave the landlord insufficient notice that they were intending on vacating the rental unit in mid April; however the insufficient notice was due to a family health emergency as the male tenant's mother was in the last stages of cancer and their family asked them to move there to help out. The tenant submitted that it was always their intention to stay at the rental unit long term, which is why they spent so much time and money when moving in to clean and repair the rental unit.

The tenant submitted that she informed the landlord of the family crisis, and that he was fine with them leaving in mid April, and to keep their security deposit for the rent for that half month. The tenant also submitted that the landlord offered to help in any way.

The tenant said all she ever asked of the landlord was for a return of their pet damage deposit, to which he has refused.

The tenant strongly denied that the rental unit needed cleaning in any way, as the rental unit was thoroughly clean when they left and in better condition than when they moved in.

The tenant denied that they left their personal property at the rental unit, and that many of the items in the landlord's pictures were in their current home. The tenant said it was obvious the landlord took his photos prior to their final move.

The tenants' relevant evidence included photographs of the interior of the rental unit and the yard at the end of the tenancy.

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, 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.

Unpaid rent-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.

I find the tenants provided the landlord insufficient notice when they informed the landlord verbally on March 28, 2013, that they were vacating the rental unit by April 15, 2013.

I also find that the tenants owed the rent for April according to the terms of their tenancy agreement and failed to do so. I therefore find the landlord has proven his claim for unpaid rent for April in the amount of \$900.

Garbage removal and cleaning-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 the circumstances before me the landlord has failed to meet his obligation under of the Act of conducting an inspection and completing the inspection reports. There is also no other independent record of the condition of the rental unit at the start of the tenancy.

I also accept the tenant's tenants submissions that they removed their personal property and that the photographs taken by the landlord were prior to their final move. The

landlord also later in the hearing after I questioned him following the tenant's testimony acknowledged that some of the items shown in his photographs were removed by the tenants. I find this admission caused me to doubt the credibility of the landlord's evidence.

I also find that the invoice created by the landlord did not prove that the landlord suffered a loss or that the rental unit required cleaning.

Due to the above, I find the landlord has submitted insufficient evidence to prove his claim for cleaning, garbage removal, and garbage disposal fee and I dismiss his claim for \$200, without leave to reapply.

I have not awarded the landlord recovery of his filing fee.

Due to the above, I find the landlord has proven a total monetary claim of \$900 for unpaid rent for April 2013.

I must now consider the issue of the security deposit and the pet damage deposit held by the landlord.

Under section 38 (1)(d), I find the landlord properly filed an application claiming against the tenants' security deposit for unpaid rent, even though the landlord failed to conduct move-in or move-out inspections; however, pursuant to section 38 (7) of the Act, a pet damage deposit may be used only for damage caused by a pet.

As the landlord has not claimed for damage caused by a pet, I therefore find that the landlord possessed no such right to make a claim against the pet damage deposit and was required to return the tenants' pet damage deposit within 15 days of the later of the date the tenancy ended or the date the landlord received the tenants' written forwarding address. In this case the later of those two dates was April 18, 2013, when the landlord received the tenants' written forwarding address, and the landlord has not returned the tenants' pet damage deposit.

Therefore pursuant to section 38(6)(b), the landlord must pay the tenants double the amount of the pet damage deposit of \$450, or \$900.

I direct the landlord to retain the tenants' security deposit of \$450 in partial satisfaction of his monetary award of \$900. I also direct the landlord to retain \$450 from the tenants' pet damage deposit, which has now been doubled to \$900, in full satisfaction of his monetary award.

I find the tenants are entitled to a monetary award of \$450, which is the balance due from their pet damage deposit of \$450, which has been doubled to \$900, less the deduction for the balance of the landlord's monetary award of \$450.

Conclusion

The landlord's application for dispute resolution for monetary compensation has been granted in part and dismissed in part as I have awarded the landlord monetary compensation in the amount of \$900 for unpaid rent for April for the reasons stated above.

The tenants are granted a monetary award of \$450 for the reasons stated above. I therefore grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act in the amount of \$450, which I have enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants 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. The landlord is advised that costs of such enforcement are 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* and is being mailed to both the applicant and the respondent.

Dated: July 11, 2013

Residential Tenancy Branch