



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNDC, MNSD, FF

For the landlord: MNSD, MNDC, MND, MNR, 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 her security deposit, doubled, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee.

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

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

I have reviewed the substantial amount of written 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.

Issue(s) to be Decided

1. Is the tenant entitled to a monetary order comprised of her security deposit, doubled, for further monetary compensation and to recover the filing fee?
2. Is the landlord entitled to authority to retain the tenant's security deposit, further monetary compensation and to recover the filing fee?

Background and Evidence

The evidence shows that this 1 year, fixed term tenancy began on May 1, 2012, monthly rent was \$1550, and the tenant paid a security deposit of \$775 on April 20, 2012.

When questioned, both parties agreed that the tenant vacated the rental unit on February 21, 2013.

Tenant's application-The tenant's monetary claim is \$4839, comprised of a return of her rent paid for March and April 2013, in the amount of \$3100, her security deposit of \$775, doubled to \$1550, and washing machine repair for \$189.

*Return of rent-*The tenant contended that she gave the landlord notice in December that she was ending the tenancy prior to the end of the fixed term, which was April 30, 2013, as she had bought a condominium.

The tenant paid rent for March and April, in full; however the tenant contended that the landlord had already re-rented the rental unit and that she collected rent both from her and the new tenant.

The tenant further submitted that she had driven by the rental unit in April, at which time she noticed that someone was living there. She spoke with the person there and discovered that he had signed a tenancy agreement with the landlord and moved in. The tenant obtained a copy of the tenancy agreement and submitted it into evidence. I note that the tenant mistakenly thought the new tenancy began in March as the parties signed the agreement on March 4, 2013; however the effective beginning date of that tenancy listed was April 1.

The tenant further submitted that the landlord demanded that the tenant meet with her on March 31, 2013, to collect the rent for April, and that the tenant complied by paying such rent of \$1550.

The tenant said that at the meeting on March 31, 2013, she asked the landlord about an inspection of the rental unit and a return of her security deposit; however the landlord yelled at her and the tenant felt threatened, according to the tenant.

Landlord's response-The landlord agreed that she rented out the rental unit for April, but she believed the tenant should honor the fixed term contract, and she admitted that she was angry with the tenant for breaking the fixed term contract.

The landlord also agreed she asked for the rent for March and April.

Return of security deposit, doubled-The tenant submitted that she was entitled to her security deposit, doubled, as the landlord has yet to return it. The tenant confirmed that she provided her forwarding address verbally to the landlord, not in written form.

Repair of the washing machine-The tenant submitted that laundry facilities were included with the rental unit and was an agreed upon term, as listed in the tenancy agreement. The tenant stated that on December 13, 2012, she met with the landlord and informed her that the washing machine was not working. The tenant said that she also told the landlord she was traveling out of the country for 3 weeks, and upon her return, the washing machine was still not working.

According to the tenant, as the landlord refused to repair the washing machine, she had the machine repaired herself, at a cost of \$189.

Landlord's response-The landlord agreed that she did not make the repairs to the washing machine, as she believed the tenant used the washing machine incorrectly as there was so much water in the machine.

Landlord's application -The landlord's listed monetary claim is \$3916.22, for cleaning for \$550, wall and door repair for \$850, blind change for \$650, dryer repair for \$300, granite countertop repair for \$1200, lock change for \$70, electricity charges for \$296.22, and the filing fee of \$50.

The landlord contended that she was entitled to compensation due to the damage to the rental unit by the tenant, as listed above. The landlord submitted into evidence an estimate for wall repair, an estimate for granite counter top repair, and an estimate for the dryer repair.

The landlord also submitted a receipt, which as apparently for cleaning, as the figure on the receipt matched the claim for cleaning; however the receipt was not in English and I

was unable to read the writing. I also note there was not a detailed breakdown of any cleaning performed. I also note that the receipt was dated April 12, 2013, which was after the date a new tenancy began.

The landlord also submitted pictures, which she confirmed were taken by the new tenant on April 14, after he had moved in, and then were emailed to her by that new tenant.

I must note at this point that the landlord had difficulty in expressing herself, due to her a language barrier, as English is not her first language. The landlord repeatedly answered my questions with a response not related to what I had asked. I did ask the landlord if she had thought to bring an interpreter to the hearing, and she said that she tried, but no one would help.

I ultimately let her speak and tell me anything she wanted in support of her application.

Tenant's response-The tenant stated that when the parties met on March 31, the landlord never mentioned cleaning; in fact, according to the tenant, the landlord's real estate agent complimented the tenant on keeping the home so clean.

The tenant denied putting nail holes in the wall, or otherwise damaging the walls, and that the carpet was already stained.

The tenant denied owing for an electrical bill, as she paid all the bills when living in the rental unit, and for the last bill, this was for a period of time when she had already vacated the rental unit.

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, 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 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.

Tenant's application-

Return of March and April 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*.

Section 44(1)(d) of the Act lists the ways in which a tenancy, including when the tenant vacates the rental unit.

In the case before me, I find the tenant provided insufficient notice as required by the Act to end the tenancy when she gave early notice to the landlord and vacated earlier than the end of the fixed term and was liable to the landlord for any losses in unpaid rent she may have suffered; however, the landlord is under a statutory duty to take reasonable steps to minimize her economic loss by making attempts to re-rent the rental unit, pursuant to section 7(2).

In the case before me, I find it clear that the landlord made a reasonable attempt to re-rent the rental unit, as it was re-rented for April 2013, and therefore the landlord did not suffer an economic loss in that month, the last month of the fixed term. Therefore the landlord possessed no right to demand the last monthly payment of rent for April from the tenant, knowing that she entered into a new tenancy agreement with another tenant, for an increased monthly rent.

Due to the above, I find the tenant is not entitled to a return of her monthly rent of \$1550 for March 2013, as the tenant was obligated to pay rent in accordance with the tenancy agreement. I, however, likewise find the tenant is entitled to a return of the April payment of rent for \$1550, as the landlord had already mitigated her loss for April with a

new tenancy for that month. I therefore find the tenant is entitled to a monetary award of \$1550.

Security deposit- Section 38(1) of the *Act* requires a landlord to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of receiving the tenant's forwarding address *in writing*. Section 38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the security deposit.

In this case, the tenant confirmed that she had not provided the landlord with her written forwarding address as the forwarding address was provided verbally.

As a security deposit is held in trust by the landlord for the tenant's benefit, I find the tenant is entitled to its return. However, due to the tenant's failure to comply with her obligation under the Act that she provide the landlord with her written forwarding address, I find the tenant is not entitled to double that amount.

I therefore find the tenant is entitled to a monetary award of \$775.

Washing machine repair- I find the tenant was entitled to laundry facilities under the tenancy agreement and that the landlord failed to provide a working washing machine. The landlord confirmed that she did not comply with the tenant's request for a repair as she believed the tenant was at fault, with no proof at all supplied.

I find it reasonable that the tenant had the machine repaired due to the landlord's failure to comply with the Act in attending to the repair requests of the tenant, that the landlord benefitted from the washing machine being repaired, and that had the tenant filed an application for dispute resolution seeking the landlord's compliance with the Act, the cost to the landlord would have possibly been greater.

I therefore find the tenant is entitled to a monetary award of \$189.79, the amount shown on the tenant's receipt.

I find the tenant is entitled to recovery of the filing fee of \$50.

Due to the above, I find the tenant has proven a total monetary claim of \$2564.79, comprised of a return of the April rent payment of \$1550, her security deposit of \$775, a washing machine repair of \$189.79, and the filing fee of \$50.

Landlord's application-

Cleaning, damages to the blinds, granite countertop, walls, and dryer repair-

A key component in establishing a claim for damage or cleaning 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 I find the landlord has failed to meet her obligation under of the Act of properly conducting an inspection, as the Residential Tenancy Branch Regulation requires that the rental unit be empty and the landlord conducted the initial inspection more than a month after the tenancy began. Additionally, the condition inspection report was incomplete, as it only referenced two rooms.

I also could not rely upon the landlord's photographic evidence as they were taken by the new tenants after their tenancy had started. I find that with estimates, the landlord failed to prove she sustained a loss, and the one receipt was for a date after the new tenancy had started.

I also accepted the tenant's documentary evidence that she hired as cleaner and a carpet cleaning company to clean the rental unit prior to her moving out.

I therefore find the landlord submitted insufficient evidence to support her claim for cleaning and damages and I dismiss her monetary claim, without leave to reapply.

*Fob, lock and key-*Although a tenant is required to return the keys at the end of the tenancy, I find in these circumstances that the landlord failed to provide clear evidence that she accepted the keys and fob from the tenant. I therefore dismiss her claim for \$70.

Electric charges- I dismiss the landlord's claim for electric charges as she provided no proof that the tenant did not pay the initial share of the electric bill and the ending bill covered a period of time after the tenancy ended. I therefore dismiss her claim for \$296.22.

*Filing fee-*I dismiss the landlord's request to recover the filing fee as I have dismissed her monetary claim.

Conclusion

The tenant is granted a monetary award of \$2564.79.

I grant the tenant a final, legally binding monetary order in the amount of \$2564.79, 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 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 subject to recovery from the landlord.

The landlord's application is dismissed.

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 19, 2013

Residential Tenancy Branch