



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Royal Lepage City Centre
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNSD and FF

The hearing was convened on the landlord's application of July 23, 2013 seeking a monetary award for unpaid rent, damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to a monetary award for the claims submitted and authorization to retain the security deposit.

Consideration of claims for damages takes into account whether the damages are proven and attributable to the tenant, normal wear and tear, depreciation and the comparison of move-in/move-out condition inspection reports, and whether amounts claimed are proven and reasonable.

Background and Evidence and Analysis

This tenancy began on July 15, 2011 and ended on July 3, 2013 on the tenant's notice given on June 4, 2013. Rent was \$2,700 per month and the landlord holds a security deposit of \$1,375.

During the hearing, the landlord's agent gave evidence that the tenant owed \$600 in unpaid rent as a result of having paid only \$2,500 for April, May and June of 2013 instead of the rent set at \$2,700. The rent had been \$2,750, but was reduced by \$50 when the initial one-year fixed term ended and the tenancy became month to month.

The tenant stated that the landlord had agreed to reduce the rent to \$2,500 after she had fallen short on an earlier rent payment and that the agent had concurred by email when she had protested notices of the \$200 shortfall in rent payments.

The agent stated that his direct knowledge of that agreement was limited as the tenant had approached the landlord directly on the question. He stated that he had consulted with the landlord who had given him direction that his offer to reduce the rent to \$2,500 was contingent on the tenant signing a new one-year fixed term agreement. The tenant claimed to have submitted a late email that indicated the agent had acquiesced to the rent reduction, but it is not before me and, therefore, I cannot rely on it.

The parties agree that a move-out condition inspection report scheduled for July 3, 2013 was not completed, but each blames the other for the failure. The tenant stated that she was still cleaning at the designated time and the agent was to return later, but did not. The agent stated that he did not return because the tenant did not call him when she was ready.

Analysis

The tenant concurs in fact that she paid \$2,500 in rent for April, May and June 2013, but contends that she did so by agreement of the landlord. The agent stated that the landlord had only offered the rent reduction if the tenant was to commit to a further one-year fixed agreement. As she had not done so, there was no rent reduction.

In the absence of definitive, written proof of a rent reduction, I find on the balance of probabilities that the version of the landlord and agent is the correct one. In so concluding, I have taken into account the landlord's conduct in accepting late notice without claiming for consequent loss is strongly indicative of fair mindedness.

As to the claims for cleaning and repair of damage to the rental unit costing \$400, in the absence of a move-out condition inspection report, I find the benefit of doubt must favour the tenant on her claim that she would have remedied any deficiencies on the inspection. Therefore that part of the landlord's application is dismissed as unproven.

As this dispute includes breaches of the legislation by both parties, the tenant in giving late notice and the landlord in not attending to the move-out condition inspection, among others, I find that the filing fee should be share equally between the parties.

As authorized by section 72 of the *Act*, I hereby order that the landlord may retain the amount found owed to him herein from the tenant's security deposit and the tenant is given a Monetary Order for return of the balance. Thus, I find that accounts balance as follows:

Tenant's Credit		
Security deposit (No interest due)	\$1,375.00	\$1,375.00
Award to Landlord		
Rent shortfall for April, May and June 2013 @ \$200 per mo.	\$600.00	
One-half of filing fee filing fee	<u>25.00</u>	
Sub total	\$625.00	- <u>625.00</u>
TOTAL remaining to be returned to tenant		\$750.00

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$750.00** for service on 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: August 30, 2013

Residential Tenancy Branch

