



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE WOLSTENCROFT REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR MND MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on May 18, 2013 by the Landlord to obtain a Monetary Order for: unpaid rent; damage to the unit site or property; to keep all or part of the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlord and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Landlord be granted a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: Canada Post receipts; the tenancy agreement; the move in and move out condition inspection report form; an invoice issued by the Landlord for cleaning and repairs to the unit; tenant payment ledger; e-mail communications between the Landlord and Tenant; and photos of the rental unit.

The parties entered into a written fixed term tenancy agreement that began on September 1, 2012, and switched to a month to month tenancy after February 28, 2013. Rent was payable on the first of each month in the amount of \$1,100.00 and on August 27, 2012, the Tenant paid \$550.00 as the security deposit plus a \$100.00 non-

refundable move-in fee. Both parties attended the move in condition inspection and signed the inspection report form on August 29, 2012. The Tenant refused to attend the move out inspection which was conducted in his absence on May 1, 2013.

The Landlord testified that the Tenant provided proper notice to end the tenancy effective April 30, 2013; however he did not pay the April rent. After several telephone conversations and text messages the Tenant advised he would be leaving a cheque for half of the month's rent and the keys inside the rental unit and that his security deposit could be used for the balance of rent. The Landlord has sought payment for the \$550.00 owed for April 2013 rent.

The Landlord stated that the Tenant refused to attend the move out inspection, as supported by the e-mails in her evidence. She also provided photos in her evidence were taken May 1st and May 3rd as proof of the condition the rental unit was left in. She argued that the cleaning was not finished and that there was damage to three walls (one in the living room; a closet wall; and on in the den) which needed to be fixed. She has submitted a statement issued by her company for \$75.00 of cleaning and \$250.00 for repairs. She testified that the work was completed by a cleaning person and a handyman; both whom are contractors hired by her company.

The Tenant's agent refuted the Landlord's claim for cleaning and damages stating that she had cleaned the rental unit to the best of her ability. She noted that her spouse forgot a dozen eggs inside the refrigerator, but other than that she cleaned the entire unit. She confirmed there was one damaged wall in the living room but that was like that when they moved in and that the Landlord had attempted to fix it and only made it worse. She argued that the Landlord has a history of having her daughter and she claim to do work just to keep deposit money. They returned all keys and the garberator so no money should be claimed for those items.

In closing, the participants' mailing addresses were confirmed and neither party at anything further testimony to submit.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 26 of the Act stipulates that a Tenant must pay rent in accordance with the tenancy agreement.

Section 21 of the Act stipulates that unless the landlord gives written consent, a tenant must not apply a security deposit or a pet damage deposit as rent.

In this case the Tenant had possession of the rental unit for the entire month of April 2013 and only paid \$550.00, half of the \$1,100.00 monthly rent due. The Tenant requested that the Landlord use his security deposit for the rest of his rent payment; however, the Landlord refused.

Based on the above, I find the Tenant breached sections 26 and 21 of the Act. Accordingly, I award the Landlord unpaid rent for April 2013 in the amount of **\$550.00**.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Upon review of the photographs and after considering the Tenant refused to attend the move out inspection, I find the Tenant breached sections 32(3) and 37(2) of the Act, leaving the rental unit needing some minor cleaning and with minimal damage to three walls, at the end of the tenancy.

In this instance, I find the Landlord has insufficient evidence to prove or verify the actual value of all of the losses or damages claimed. The Landlord testified that outside contractors were hired to complete the work yet did not provide invoices or receipts and did not provide proof of payment made to the contractors for the work which was allegedly completed. Rather, the Landlord created her own invoice from her company simply listing amounts charged without a description of what work was completed, proof of cost of materials, or the amount of labour provided.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the condition of the rental unit displayed in the photos I hereby grant the Landlord compensation in the amount of **\$55.00** which is comprised of \$20.00 for cleaning plus \$35.00 for wall repairs, in accordance with section 67 of the Act.

The Landlord has primarily been successful with their application; therefore I award recovery of the **\$50.00** filing fee

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid Rent	\$550.00
Cleaning & Damages	55.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$655.00
LESS: Security Deposit \$550.00 + Interest 0.00	<u>-550.00</u>
Offset amount due to the Landlord	<u>\$105.00</u>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$105.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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 22, 2013

Residential Tenancy Branch

