



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary order and an order to retain the security deposit. The hearing was conducted by conference call. The landlord's agent and the tenant called in and participated in the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is a house in West Vancouver. The tenancy was for successive fixed terms. The latest term commenced on October 1, 2012 for a two year term, with rent in the amount of \$3,650.00 payable on the first of each month. The tenant paid a security deposit of \$1,750.00 and a pet deposit of \$1,750.00 on August 25, 2010.

The landlord's agent testified that the tenant moved out of the rental unit in April without giving notice. The tenant left the rental property in a mess and the May rent payment was returned NSF. The landlord has claimed for lost revenue for May and June as well as unpaid utilities and the cost of cleaning and repairs to the rental property. The landlord claimed the following amounts:

- | | |
|-----------------------------|------------|
| • Rent (May-June 2013) | \$7,300.00 |
| • Utilities (Jan-June 2013) | \$614.76 |
| • NSF fee (May 2013 rent) | \$25.00 |
| • Cleaning of Home | \$651.00 |
| • Repairs to home/yard | \$2,430.25 |

Total: \$11,021.01

The landlord submitted photographs of the rental unit, copies of e-mails exchanged with the tenant and copies of invoices for the cleaning and repair charges.

The tenant did not submit any documents or photographs in reply to the landlord's claim, but she testified that the landlord had acted improperly by taking possession of the rental unit by changing the locks and preventing her former partner, who was still living in the rental unit, from accessing his belongings and clothing. The tenant also said that the landlord chose to perform renovations to the rental property after she moved out, including replacing the roof and renovating the bathroom. The tenant said that the landlord had overcharged for the cleaning and repairs. She referred to the invoices that contained several references to carpet cleaning, to house cleaning and to garbage disposal. The tenant also testified that some of the yard work mentioned in an invoice was for garden trimming that had not been performed when the tenancy started, notably trimming blackberry bushes.

The landlord's agent said that the invoices do not contain duplications. There was more than one charge for carpet cleaning because the carpets had to be cleaned twice in an effort to remove stains. There was also more than one bill for garbage disposal.

As set out in the landlord's documents, on May 9, 2013 in response to an inquiry about an NSF payment of rent for May, the tenant said that she and her partner had separated and she had moved out of the house in early April. She said that "(Name of ex-partner) was to contact you to put the lease in his name. I'm guessing he hasn't done so. He's still living there. I'm not sure what the procedure would be under these circumstances. Please advise."

When informed that she was the sole tenant and responsible for the lease payments the tenant replied on May 10th:

Please proceed with whatever you need to do to get him out of the house. I'm applying for bankruptcy and will not make any further payments on the lease.

Sorry for the mess. (name of tenant)

On May 14, 2013 the tenant said in an e-mail to the landlord's agent:

I understand from my neighbour that (name of ex-partner) has left (address of rental unit) and that you have been by to assess.

I'm currently out of town but will be back on Sunday the 19th and was wondering if I can pick up a few things that were left behind before you take the property back?

The landlord's agent replied on May 15th and said that the remaining abandoned belongings had been moved to the carport/shed and the tenant could pickup items there next week.

Analysis and conclusion

The tenant submitted that the landlord acted improperly by evicting her former partner without due process by changing the locks and denying him access to recover his belongings from the rental unit. The landlord's agent said that the rental property was vacant and had been abandoned in May when the landlord regained possession. I find that the tenant's e-mails to the landlord's agent support the landlord's version of events. I do not find there to be any convincing evidence that the landlord acted improperly to evict an occupant of the rental property.

The evidence established that the tenant breached the fixed term tenancy and moved out of the rental unit without notice in April 2013. Rent was not paid for May or for June. The landlord succeeded in re-renting the unit commencing July 1st. I find that the landlord is entitled to recover lost rent for May and June in the amount of \$7,300.00. The photographs supplied by the landlord show that the property was left in disarray at the end of the tenancy. This was acknowledged by the tenant who apologised in her e-mails for the mess that she had left behind. I accept the evidence of the landlord's agent that the invoices provided are an accurate statement of the landlord's out of pocket expenditures to put the rental property back into rentable condition, but I reduce the amount awarded by \$200.00 to take into account gardening work that the tenant testified was not done when the tenancy began. The total award to the landlord is the sum of \$10,821.01. The landlord is entitled to recover the \$100.00 filing fee for this application, for a total award of \$10,921.01. I order that the landlord retain the security and pet deposits totalling \$3,500.00 in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$7,421.01. This order may be registered in the 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 19, 2013

Residential Tenancy Branch

