



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MND, MNDC, 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 money owed or compensation for damage or loss, unpaid rent and alleged damage to the rental unit, for authority to retain the tenant's security deposit and for recovery of the filing fee.

The landlord, the landlord's partner, and the tenant 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 landlord confirmed receipt of the tenant's evidence.

Thereafter all parties 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 Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary issue—The landlord submitted documentary evidence which was a late submission, not within the 5 day timeframe allowed under the Rules. I offered the tenant the opportunity for an adjournment to be able to file a written response thereto, and the tenant declined, saying he wanted to have this matter concluded. As a result, the hearing proceeded, with the inclusion of the landlord's evidence.

Issue(s) to be Decided

Is the landlord entitled to permanently retain the tenant's security deposit, further monetary compensation, and to recover the filing fee?

Background and Evidence

The undisputed evidence of the parties shows that this tenancy began on June 15, 2011, that it ended when the tenant vacated the rental unit on June 12, 2013, monthly rent was \$2850, and the tenant paid a security deposit of \$1350.

Documentary evidence submitted shows that a new tenancy agreement was signed by the parties, which indicates a fixed term ending on June 30, 2013.

The undisputed evidence also shows that the landlord had retained the services of a property management company, who managed the affairs of this tenancy through March 2013, as the landlords were away from the country for long periods of time.

The parties agree that email communication was the primary method of communication between the parties, along with other methods being employed, such as text messages and the occasional telephone call.

The landlord's monetary claim is in the amount of \$5000, which is comprised of a claim for unpaid rent for June 2013 in the amount of \$2800, costs of repainting for \$1200, and costs of replacing two queen sized mattresses.

The landlord's relevant documentary evidence included a move-in condition inspection report, tenancy agreement, a written rebuttal to the tenant's evidence, an invoice for painting, dated July 1, 2013, a painting invoice dated May 27, 2011, chequing account details, a mattress invoice dated July 18, 2013, and email communication between the landlord and her former property manager.

The tenant's relevant documentary evidence included a written response to the landlord's application, a tenancy agreement, email communication from the landlord to the tenant, dated May 31, 2013, the move-in condition inspection report, an email notice from the tenant to the landlord, dated May 1, 2013, indicating a move-out date of June 15, 2013, and an email notice from the landlord to the tenant informing him that she was changing the locks to the rental unit on June 12, 2013.

Unpaid rent-

In support of her application the landlord submitted that they received the tenant's notice of his intent to vacate by June 15, 2013, by email, and that although the tenant paid rent for June, he placed a stop payment on the cheque. The landlord and her partner submitted that the tenant owes unpaid rent for June 2013, which is the end of the fixed term, as the tenant violated the fixed term agreement.

The landlord conceded that there were no steps taken to advertise the rental unit for re-rent and that she sent the tenant a notice informing him that she was changing the locks on June 12, due to his failure to pay rent on June 1. The landlord argued that she did not end up changing the locks.

In response, the tenant submitted that it was necessary to send the landlord an email that he was ending the tenancy, as the landlord had severed their relationship with the property management company and that the landlord was out of the country until May 14.

Painting of the rental unit-

The landlord submitted that it was necessary to repaint the rental unit after this tenancy ended as she needed to bring the rental unit to her standards. The landlord conceded that the tenant had the rental unit professionally painted when he moved in, but that she did not like the white colour, and wanted a warmer beige colour. The landlord also conceded that the tenant used the same professional painter that she had used to repaint the rental unit.

The landlord contended that the rental unit was repainted in 2011, before this tenancy began, and that the tenant was aware that the rental unit had been repainted.

In response to my questions, the landlord confirmed that she began thinking of selling the home by June 1 and that it is now presently listed for sale.

In response, the tenant pointed out that in the move-in condition inspection report, it was very clear that the walls were in poor condition, as noted on the statement of condition, and that it had not been painted for 5 years or more. The tenant said that all the walls were damaged and that he had the permission of the property management company and the landlord to repaint the rental unit, as long as a professional painter was used.

The tenant submitted that the landlord only changed the colour to beige as it was being staged for sale, as the original colour was yellow.

The tenant pointed out that the landlord had inspected the rental unit numerous times during the tenancy, even staying over several nights, and never mentioned that she was unhappy with the painting.

Replacement of mattresses-

The landlord submitted that when the tenants moved in, there were two queen sized mattresses, and that when they moved out, they were missing.

In response, the tenant submitted that he had the permission of the landlord to take the mattresses to the landfill at the very beginning of the tenancy as they were not fit to sleep on. One reason mentioned by the tenant was that the mattresses were covered in body fluids. The tenant contended that the house was a party house, and that the mattresses were in excess of 5 years old.

The tenant submitted that the landlord said the mattresses were not fit to sleep on.

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.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Unpaid rent-In the case before me, although the tenant placed a stop payment on his rent cheque for June, there is a procedure in place for landlords under the Act for instances when a tenant fails to pay rent. That procedure is to issue the tenant a notice pursuant to section 46 of the Act, and must be in the proper form.

I find the landlord failed to issue this notice; rather she informed the tenant that she was changing the locks to the rental unit on June 12, 2013. I find this notice by the landlord violates section 31 of the Act, which states that a landlord must not change the locks to the rental unit. I do not accept the landlord's contention that she should be free from the requirements of section 31 as she never followed through with her notice to the tenant that she was changing the locks as I accept that her notice forced the tenant to arrange for movers before that date.

I find that due to the landlord's violation of section 31, that the tenancy ended when the landlord illegally changed, or informed the tenant, she was changing the locks, illegally depriving the tenant of exclusive use and possession of the rental unit. The tenant had a reasonable expectation that they would be locked out of the rental unit by June 12, and there was no evidence that the landlord informed them otherwise.

As the tenants remained in the rental unit for a portion of June, I find the landlord is entitled to unpaid rent for that portion, for a total amount of \$1124.40 (\$2850 monthly rent X 12 months = \$34,200 yearly rent ÷ 365 days per year = \$93.70 daily rate X 12 days = \$1124.40)

Painting of the rental unit-I dismiss the landlord's claim for repainting of the rental unit. The move-in condition inspection report shows that the walls in the rental unit were not

in good condition at the start of the tenancy and that the tenants had the rental unit professionally repainted.

The tenant provided undisputed evidence that he had the permission of the landlord to paint the rental unit as long as it was done professionally, with no directions that it was to be returned to the original yellow paint. I find the evidence suggests that the tenant improved the condition of the walls and I made no particular note of an email response from the property management company to the landlord's inquiry, as this evidence was not submitted in time for the tenant to prepare a response and the property manager was not made available for cross examination by the tenant.

Replacement of mattresses-

I find the landlord submitted insufficient evidence of the age or the state of the mattresses at the beginning of the tenancy, as they were not listed on the condition inspection report, and I was therefore unable to determine the value of the mattresses, and if they were fully depreciated.

I also accept the tenant's evidence that the mattresses were in an unusable state, and that he had the permission to remove them to the landfill.

I therefore dismiss the landlord's claim for mattress replacement.

As the landlord's application was partially successful, I award her recovery of a portion of her filing fee, in the amount of \$25.

Conclusion

The landlord's application for monetary compensation is granted in part as I have awarded her unpaid rent in the amount \$1124.40 and a partial filing fee of \$25, for a total of \$1149.40.

I direct the landlord to retain the amount of \$1149.40 from the tenant's security deposit of \$1350 in satisfaction of their monetary award.

I direct the landlord to return the balance of the tenant's security deposit in the amount of \$200.60.

Pursuant to section 67 of the Act, I grant the tenant a monetary order pursuant to for the amount of \$200.60, 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 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 may be recovered 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: September 27, 2013

Residential Tenancy Branch

