



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MND, MNSD, FF

Introduction:

This hearing was convened in response to cross applications

On August 23, 2013 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss; to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution. At the hearing the Landlord withdrew the application for an Order of Possession, as the rental unit was vacated on August 12, 2013.

On September 05, 2013 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of his security deposit.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings. The Landlord did not serve any evidence to the Tenant for these proceedings, although he did serve a copy of a Ten Day Notice to End Tenancy to the Residential Tenancy Branch, which he stated he posted on the door of the rental unit on August 06, 2013.

Issue(s) to be Decided:

Is the Landlord entitled to a monetary Order for unpaid rent and damage to the rental unit and should the security deposit be retained by the Landlord or returned to the Tenant?

Background and Evidence:

The Landlord and the Tenant agree that this tenancy began before the Landlord purchased the property on July 30, 2012; that at the end of the tenancy the Tenant was required to pay monthly rent of \$550.00 by the first day of each month; that the Tenant paid a security deposit of \$300.00; that the Tenant mailed his forwarding address to the Landlord on August 12, 2013; that the Tenant vacated the rental unit on July 27, 2013; and that a friend who had been staying with the Tenant, who is the Witness for the Tenant, vacated the rental unit on August 12, 2013.

The Landlord and the Tenant agree that on July 01, 2013 the Tenant gave verbal notice of his intent to vacate the rental unit at the end of July. The Tenant stated that it was his understanding that the Landlord and the Witness for the Tenant had subsequently agreed that the Witness for the Tenant would remain in the rental unit and pay rent to the Landlord.

The Witness for the Tenant stated that he began speaking with the Landlord about living in the rental unit sometime near the beginning of July of 2013; that sometime near the beginning of July the Landlord agreed that he could live in the rental unit in exchange for monthly rent of \$550.00; that sometime near the beginning of July he asked the Landlord to complete an Intent to Rent form for the Provincial Government; that the Landlord refused to complete the form; that sometime near the end of July the Landlord informed him that he did not wish to rent the unit to him; and that rent was not paid for August because the Landlord did not complete the Intent to Rent Form.

The Landlord stated that he did discuss the possibility of entering into a tenancy with the Witness for the Tenant; that it took him some time to obtain a work reference for the Witness for the Tenant; that upon learning that he was unemployed he decided not to enter into a tenancy agreement with the Witness for the Tenant; that he did refuse to complete the Intent to Rent form because he did not wish to proceed with the tenancy; and that he did not attempt to advertise the rental unit in July because he could not contact the Tenant by telephone to confirm the unit would be vacated by the end of July.

The Landlord is claiming compensation, in the amount of \$150.00, for unblocking the toilet. The Landlord stated that when he accessed the rental unit after the Witness for the Tenant had left he noted that the toilet was plugged with paper and human feces.

The Tenant stated that there had been previous problems with the toilet becoming blocked and that it had been reported to the Landlord in March of 2013. The Witness for the Tenant stated that he had observed periodic problems with the toilet clogging during the few months he had stayed with the Tenant; that a plumber had been called by a neighbouring tenant to unblock the lines in June of 2013; that the person conducting the repair told him that the line was blocked in three places; that there continued to be problems with the toilet after that repair; and that the toilet was clogged when he vacated the rental unit on August 12, 2013.

The Landlord initially stated that he was not aware of a problem with the toilet until August 12, 2013 when the Witness for the Tenant informed him that the toilet was plugged. After hearing the testimony of the Witness for the Tenant the Landlord acknowledged that he was aware that a plumber was called to unblock the toilets in June of 2013.

The Landlord is claiming compensation, in the amount of \$150.00, for removing clothing, a variety of personal property, and furniture that was left in the rental unit at the end of the tenancy. The Tenant stated that all of the furniture left in the rental unit at the end of the tenancy was in the unit at the start of the tenancy. The Landlord stated that he does not know if there was furniture in the unit at the start of the tenancy as he was not the landlord at that time. The Tenant stated that he took all his personal belongings with him at the end of the tenancy. The Witness for the Tenant stated that there was some furniture left in the unit at the end of the tenancy but that he took all of his personal property when he vacated the rental unit.

The Landlord is claiming compensation, in the amount of \$15.00, for mailing documents to the Tenant for these proceedings.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Tenant failed to comply with section 45 of the *Act* when he failed to provide the Landlord with written notice of his intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due.

I find that the Witness for the Tenant believes he had a verbal agreement with the Landlord to rent the rental unit for August 01, 2013 and that the Witness for the Tenant believes the Landlord subsequently rescinded that agreement. I am not, however, convinced that the Landlord had entered into a verbal tenancy agreement with the Witness for the Tenant. I find that the Landlord's refusal to sign the Intent to Rent form is a clear indication that he did not wish to enter into a tenancy agreement with the Witness for the Tenant. On the basis of the testimony of the Landlord, I accept that he did not wish to enter into a tenancy agreement with the Witness for the Tenant, as the Witness was unemployed. Given that there is no evidence that the Landlord entered into a new tenancy agreement for August of 2013, I find that the Landlord is at liberty to seek compensation from the Tenant for lost revenue for the month of August.

I find that the improper notice to end the tenancy prevented the Landlord from entering into a tenancy agreement with a new tenant until the Tenant vacated the rental or until the Tenant provided written notice of his intent to vacate. As the rental unit was not vacated until August 12, 2013, I find that the continued occupancy prevented the Landlord from entering into a tenancy agreement with a new tenant for August of 2013. I therefore find that the Landlord is entitled to compensation for lost revenue for August, in the amount of \$550.00.

On the basis of the undisputed evidence, I find that there was a history of a problem with the toilet becoming blocked in the rental unit and that the toilet was blocked by paper and human feces when this rental unit was vacated on August 12, 2013. I find that the Landlord has submitted no evidence to cause me to conclude that the toilet was blocked as a result of misuse or neglect on the part of the Tenant or a guest of the Tenant. I therefore find that it is reasonable to conclude that the toilet became blocked as a result of a problem with the toilet, which is likely due to normal wear and tear. As tenants are not obligated to repair damage arising from normal wear and tear, I find that the Tenant was not obligated to repair the toilet and I dismiss the Landlord's claim for this repair.

I find that the Landlord submitted insufficient evidence to show that the Tenant or his guest left personal property in the rental unit at the end of this tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that refutes the Tenant's testimony that all of the furniture left in the unit at the end of the tenancy was in the unit at the start of the tenancy. I was further influenced by the absence of evidence, such as photographs, that corroborates the Landlord's testimony that personal property was left in the rental unit or that refutes the testimony of the Tenant and the Witness for the Tenant, both of whom stated they removed all of their personal property when they left. As the Landlord has failed to establish that personal property was left in the unit, I dismiss his claim for disposing of the property.

The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow either party to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the Landlord's claim for mailing costs of \$15.00, as they are costs which are not denominated, or named, by the *Act*.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the security deposit of \$300.00 in partial satisfaction of the Landlord's monetary claim. I therefore dismiss the Tenant's application to recover the security deposit.

I find that the Tenant's application has been without merit and I therefore dismiss the Tenant's application to recover the fee for filing an Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$600.00, which is comprised of \$550.00 for lost revenue and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. This claim must be reduced by the security deposit of \$300.00 that is being held by the Landlord.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$300.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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: October 02, 2013

Residential Tenancy Branch

