



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, OPB, MNR, MNDC, MNSD, FF

Introduction

In response to the landlord's application a hearing was scheduled for September 19, 2013. Both parties attended and the tenant requested an adjournment. The tenant's request was granted and, thereafter, this present hearing was scheduled. Both parties attended and gave affirmed testimony.

In his application the landlord seeks an order of possession / a monetary order as compensation for unpaid rent or utilities / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. As the tenant has now vacated the unit, I consider the landlord's application for an order of possession to be withdrawn.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from February 1, 2013 to January 31, 2014. Monthly rent of \$800.00 is due and payable in advance on the first day of each month, a security deposit of \$400.00 was collected, and a keys / fobs deposit of \$200.00 was collected. The parties agreed that after 3 months of tenancy the tenant would be responsible for payment of hydro. A move-in condition inspection report was completed with the participation of both parties.

By way of letter dated July 25, 2013, the tenant informed the landlord of his intent to vacate the unit effective August 15, 2013. In his letter the tenant requested that the landlord meet with him at the unit on August 15, 2013 in order to "collect your keys and sign off on the condition of the apartment at the time of leaving."

Thereafter, arising from rent or utilities which were unpaid when due on August 1, 2013, the landlord issued a 10 day notice to end tenancy for unpaid rent or utilities dated August 2, 2013. A copy of the notice was submitted in evidence; it reflects the landlord's claim that rent of \$800.00 was unpaid and that utilities of \$48.66 were unpaid. Subsequently, by letter dated August 3, 2013, the tenant informed the landlord that he had vacated the unit on that same date. In his letter the tenant also set out his perspective on how much money each party owed the other, requested the return of his security deposit, and provided a forwarding address in care of his sister for that purpose. The landlord filed an application for dispute resolution on August 13, 2013.

Later, a move-out condition inspection report was completed by the landlord in the absence of the tenant. While the report is dated August 20, 2013, there is documentary evidence to suggest that the landlord inspected the unit on August 15 and on or about August 25, 2013 with relatives of the tenant's.

By letter dated August 23, 2013, the tenant again requested the return of his security deposit, and informed the landlord of his "new forwarding address." A total of 4 keys / fobs to the unit were returned to the landlord and the tenant's keys / fobs deposit in the full amount of \$200.00 was repaid.

The landlord testified that he has presently not decided whether to re-rent the unit or to sell it. Accordingly, the landlord has not undertaken to advertise for new renters and the unit currently remains vacant.

The tenant has also filed an application for dispute resolution, and a hearing has been scheduled for February 6, 2014 (file # 814088). Despite their efforts the parties were unable during the present hearing to resolve all issues in dispute between them.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and testimony, the various aspects of the landlord's claim and my findings around each are set out below.

\$800.00: *unpaid rent for August 2013.*

Section 45 of the Act addresses **Tenant's notice**, and provides in part as follows:

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that the tenant's notice to end tenancy effective August 15, 2013, which was provided by way of letter dated July 25, 2013, does not comply with the above statutory provisions. Further, there is no dispute that the tenant vacated the unit on August 3, 2013 and that no rent was paid for August 2013. In the result, I find that the landlord has established entitlement to the full amount claimed.

\$4,000.00 (5 x \$800.00): loss of rental income for the 5 month period of September 2013 to January 2014.

Section 7 of the Act speaks to **Liability for not complying with this Act or a tenancy agreement:**

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

While I have found that the landlord has established entitlement to compensation for unpaid rent for August 2013, I also find that the landlord has not undertaken to mitigate the loss of rental income for September or October or November 2013 by advertising for new renters. Accordingly, the landlord's application for loss of rental income for these 3 months is hereby dismissed. The landlord's application for compensation reflecting loss

of rental income for December 2013 and January 2014 is hereby dismissed with leave to reapply.

\$48.66: *hydro from May 15 to July 15, 2013.*

There is an invoice in support of this aspect of the claim, and I find that the landlord has established entitlement to the full amount claimed.

\$34.26: *hydro*

In the absence of an invoice in support of this aspect of the claim, it is hereby dismissed.

\$78.75: *unit cleaning.*

I find that there were certain irregularities in the completion of the move-out condition inspection and report. Specifically, in his letter of August 3, 2013, the tenant proposed a meeting at the unit on August 15, 2013 for this purpose. Further, it appears that the landlord inspected the unit on 2 separate occasions with a relative of the tenant's on August 15 and on or about August 25, 2013, even while the report itself is dated August 20, 2013.

Section 37 of the Act addresses **Leaving the rental unit at the end of a tenancy**, in part as follows:

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and.....

Following from all of the above, I am unable to find that the landlord has met the burden of proving that the unit was not left "reasonably clean, and undamaged except for reasonable wear and tear" at the end of tenancy. In the result, this aspect of the application is hereby dismissed.

\$50.00: *filing fee*

As the landlord has achieved a measure of success with his application, I find that he has established entitlement to recovery of the full filing fee.

Sub-total: \$898.66 (\$800.00 + \$48.66 + \$50.00)

Section 72 of the Act speaks to **Director's orders: fees and monetary orders**, in part:

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

I find that the landlord's application for dispute resolution filed on August 13, 2013, was filed within 15 days of his having first been informed by the tenant of a forwarding address by letter dated August 3, 2013. Accordingly, I find that the doubling provisions referenced by the tenant during the present hearing, pursuant to section 38 of the Act which speaks to **Return of security deposit and pet damage deposit**, do not apply. In the result, I order that the landlord retain the security deposit of **\$400.00**, and I grant the landlord a **monetary order** under section 67 of the Act for the balance owed of **\$498.66** (\$898.66 - \$400.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$498.66**. Should it be necessary, this order may be served on the tenant, filed 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: November 06, 2013

Residential Tenancy Branch

