



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNDC, MNR, MND, FF

Introduction

This was a cross-application hearing.

The tenant applied requesting return of the security deposit and to recover the filing fee cost.

This hearing was scheduled in response to the landlord's application requesting compensation for damage to the rental unit, unpaid rent, compensation for damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

At the start of the hearing the tenant agreed to amend her application to reflect the business name of the landlord.

The landlord said an evidence package had been submitted to the Residential Tenancy Branch (RTB). The tenant said she received an evidence package on November 25, 2013. There was no evidence submission before me; the landlord had applied for dispute resolution on August 23, 2013.

The landlord said that on November 25, 2013 she had supplied the RTB with 4 documents as evidence. Residential Tenancy Branch Rules of procedure require service of evidence at least 5 days prior to the hearing. When serving the RTB the days do not include the day of service, the day of the hearing, weekends or statutory holidays. As the evidence was given to the tenant only 4 days prior to the hearing and not given to the RTB at least 5 days prior to the hearing, that evidenced was not considered or sought out. The landlord had almost 3 months in which to supply evidence, yet did not do so until just prior to the hearing. Therefore, the landlord made oral submissions, in the absence of any written submissions.

The tenant supplied a copy of the tenancy agreement and a July 29, 2013 letter from the landlord, as evidence.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit and unpaid rent?

Is the landlord entitled to compensation for the loss of rent revenue?

May the landlord retain the security deposit?

Is either party entitled to filing fee costs?

Background and Evidence

The 1 year fixed-term tenancy commenced on September 1, 2012, rent was \$1,325.00 due on the 1st day of each month. A security deposit in the sum of \$450.00 was paid. The tenant moved into this unit from another owned by the landlord; the security deposit was transferred to this new tenancy.

A move-in condition inspection report was completed.

There was no dispute that on June 6, 2013 the tenant gave notice that she would vacate at the end of that month. The tenant was given cleaning instructions and on July 5, 2013 the landlord completed a move-out inspection, in the absence of the tenant. The landlord did not schedule a move-out condition inspection with the tenant.

The tenant confirmed that she did not supply the landlord with a written forwarding address until she served the landlord with her application. The landlord then applied, claiming against the deposit within fifteen days.

The landlord has made the following claim:

Lease cost	\$450.00
Carpets	140.00
Drapes	40.00
Cleaning	400.00
Painting	371.25
Loss July 2013 rent revenue	1,325.00
TOTAL	\$2,726.25

The landlord testified that the tenant owes \$662.50 in liquidated damages. The tenancy agreement provided as evidence indicated that the liquidated damages clause was initialed, but did not include any sum as liquidated damages. The landlord said that the amount owed was added to the document later.

The tenant gave notice, ending the fixed term lease; the landlord told the tenant she was breaking the lease and that the landlord would make efforts to assist the tenant in locating a new occupant.

The landlord said the unit was advertised on their web site and another popular web site. Several individuals wanted to see the unit during the month of June, but the tenant denied the landlord access. On the day the tenant was vacating the landlord went to

the door with 3 foreign students who wanted to see the unit and possibly rent it immediately. The tenant would not allow the landlord to show the unit on such short notice. The landlord said that those students would have rented the unit effective July 6, 2013; and that they did rent a different unit in the building. The landlord said often potential occupants would come to the building wanting to see units, but as the tenant would not agree to showings on short notice, the landlord would show other vacant units.

The tenant stated that the landlord did not ever attempt to show the unit and that she did not deny the landlord access on the date she was vacating. The tenant said that she believed the landlord was lying.

The landlord sent the tenant a list of charges dated July 29, 2013 which the tenant supplied as evidence. All of the charges, with the exception of painting, were provided by the landlord's own staff.

The tenant did not clean the carpets at the end of the tenancy; the tenant had a bird and seed and bird dirt was left on the carpets and walls. The landlord gave the tenant cleaning instructions, allowing the tenant to clean the carpets on her own. The tenant said that she had cleaned the carpet with her own machine.

The landlord said that the tenant did not clean the unit. The unit had been painted at the start of the tenancy. The entire unit had to be cleaned; the witness, the building maintenance person, said it took 2 people all day to clean the unit. The windows, blinds, toilet, bathtub, kitchen appliances, washer and dryer required cleaning. The witness also said the carpets had not been cleaned by the tenant.

The tenant stated that she cleaned the unit when she left. Both of the tenant's witnesses testified that they were at the unit at the end of the tenancy, during the morning the tenant was vacating and that the unit was left in a clean state.

The tenant said there were vertical blinds and that she cleaned them. The tenant denied that any mess was caused by her bird. The tenant stated the landlord paints every unit at the end of each tenancy and that she had been in the unit only 10 months; that it did not require fresh paint.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

A tenant may only end a fixed-term tenancy agreement if the landlord has failed to comply with a material term of the tenancy that was not corrected within a reasonable period of time after written notice is given by a tenant. That did not occur in this instance; therefore, I find that the tenant ended the tenancy effective July 1, 2013, in breach of the Act.

There was no evidence before me that the tenant took any steps to assist in mitigating the loss that might be incurred by the breaking of the lease. I found the landlord's testimony in relation to efforts made, believable and consistent. Despite the tenant's assertion that the landlord was not telling the truth, I preferred the testimony of the landlord over that of the tenant. I have also considered the burden of proof, which falls to the landlord, as the applicant. The real test of the truth of the story must align with the balance of probabilities and, in the circumstances before me; I find the version of events provided by the landlord to be highly probable given the conditions that existed at the time. Considered in its totality, I favoured the evidence of the landlord over the tenant, in relation to attempts made to rent the unit.

The tenant did not take any steps to assist the landlord in locating new occupants and I find, on the balance of probabilities that the landlord did attempt to show the unit on the last day of the tenancy. When the tenant failed to allow entry to the unit I find that she was within her right to do so, in accordance with section 29 of the Act, however; her decision did deny the landlord an opportunity to show the unit denied an opportunity to mitigate the potential loss of rent.

Therefore, I find that the landlord is entitled to compensation in the sum of \$1,325.00 for loss of June 2013 rent.

The tenancy agreement supplied as evidence did not indicate any sum payable as liquidated damages. As the landlord confirmed no sum was indicated on the agreement at the time the parties signed the tenancy agreement, I find that the claim for liquidated damages is dismissed. When there is disputed testimony I rely upon the written agreement for clarity.

The tenant disputed the landlord's claim for cleaning and painting and, in the absence of a move-out condition inspection and report or any invoices verifying the sums claimed, I find, on the balance of probabilities, that the claim for cleaning and painting is dismissed.

I considered the landlord's testimony and that of her witness in comparison to that given by the tenant and her witnesses. When a condition inspection report is not scheduled; in accordance with the RTB Regulation a landlord must bring forward a preponderance of evidence to prove a claim for damage. Outside of the disputed testimony there were no photographs or any invoices or proof of payment supplied.

Therefore, I find that the landlord has established a monetary claim, in the amount of \$1,375.00, which is comprised of loss of June 2013 rent revenue in the sum of \$1,325.00 and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit in the amount of \$450.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$925.00. 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.

The balance of the claim is dismissed.

Conclusion

The landlord is entitled to compensation for loss of rent revenue and has been issued a monetary Order.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

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: December 02, 2013

Residential Tenancy Branch

