



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on August 13, 2013, by the Landlord to obtain a Monetary Order for: unpaid rent or utilities; to keep the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Tenant confirmed receipt of the initial package of evidence from the Landlord; however, he did not receive the letter that was written by the carpet cleaner which spoke to the condition of the carpet. The Landlord argued that the Tenant was sent copies of all his evidence.

Section 3.1 of the *Residential Tenancy Branch Rules of Procedure* stipulates how evidence must be served upon the other party. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore, as the Tenant indicated that he has not received a copy of the letter written by the carpet cleaner, I find that evidence cannot be considered in my decision. I did however consider the Landlords' testimony regarding the contents of that letter.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord testified that they entered into the written fixed term tenancy as provided in his documentary evidence. The tenancy began on September 1, 2012 and was for a one year term. Rent was payable on the first of each month in the amount of \$2,150.00 plus utilities and the Tenant paid \$1,110.00 as the security deposit on September 1, 2012. No move in or move out condition inspection report forms were completed.

The Landlord submitted that on March 17, 2013, the Tenant sent him a text message indicating that he would be ending his tenancy as of April 30, 2013. He said he told the Tenant there would be consequences for breaking the lease and the Tenant offered for him to keep the security deposit as full compensation. Then on April 24, 2013, he received a text message from the Tenant saying he had moved out, left the keys inside, and locked the door. The Tenant also provided his forwarding address by text message on April 24, 2013.

The Landlord stated that when he went to the unit he found the keys inside and the unit was left with some damages to the walls, a broken fridge, and dirty carpets. He noted that the Tenant had patched the drywall but had not mudded or painted it. He also noted that the inside of the fridge had broken trays and he later found out that the fridge was not working properly. The fridge had originally been purchased in 2011. Furthermore, the Tenant moved out leaving a \$100.00 cheque to be put towards the cost of hydro but he did not pay for accumulated natural gas and water bills. The Landlord argued that he was not able to re-rent the unit until July 1, 2013, even though he began advertising the unit as soon as he found out the Tenant was moving.

The Landlord stated that he was seeking monetary compensation in the amount of \$5,511.10 which is comprised of \$452.62 for natural gas and water bills; \$497.98 for the new fridge; \$260.50 for carpet cleaning; \$2,150.00 for May rent and \$2,150.00 for June 2013 rent. He provided evidence which included utility bills and receipts for the carpet cleaning and new fridge.

The Tenant testified that he was of the opinion that he had signed a month to month tenancy. He stated that he read the agreement before he signed it but that he had initially requested that it be a month to month tenancy. He indicated that he provided proper notice to end his tenancy when he gave over one month's notice.

The Tenant confirmed that he was required to pay for electricity and natural gas but argued that at no time was he told that he would be required to pay for water. He is not disputing the claim for natural gas charges but he disputes the water claim.

The Tenant argued that the carpet had stains on it when he first moved in. He stated that this was his first time renting and that the Landlord was not specific about the move out process so he did not know he was supposed to clean the carpets when he moved out. He claims that when he moved out of the unit the fridge was in perfect working order and did not have any damage.

In closing, the Landlord confirmed that the Tenant initially requested a month to month tenancy but that he had not agreed to that, as evident by the tenancy agreement. He stated that he was not given a chance to conduct the proper move out inspection because he was expecting to meet up with the Tenant on April 30, 2013. He did not inform the Tenant about the requirement for a move out inspection, other than what is written in the tenancy agreement, and he did not issue a final notice of inspection.

The Tenant provided a new service address as listed on the front of this decision.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

Section 45 of the Act stipulates that a tenant may end a fixed term tenancy agreement by providing the Landlord with one month written notice to end the tenancy effective on a date that is not prior to the end of the fixed term.

In this case, the parties signed a written tenancy agreement which states the address of the rental unit followed by:

One year term (or more) starts September 2012

Based on the above, I find the parties entered into a one year fixed term tenancy that was set to end on August 31, 2013. The Tenant provided notice to end the tenancy effective April 30, 2013, which is in breach of Section 45 of the Act. The Landlord attempted to re-rent the unit as soon as possible but was not able to do so until July 1, 2013. I find it was the Tenant's breach of ending the tenancy early that caused the

Landlord to suffer a loss of rent for May and June 2013. Accordingly, I award the Landlord loss of rent in the amount of **\$4,300.00** (2 x \$2,150.00).

The tenancy agreement stipulates the Tenant's responsibility for utilities as follows:

When BC Hydro comes in, I will break down the amount to send to you via text, a copy will be given to you when I go to pick up the rent.

The Landlord has filed seeking compensation for natural gas utility costs of \$289.47 plus \$163.15 for water usage. The Tenant does not dispute the claim for natural gas but he disputed ever knowing that he was required to pay for water usage.

Based on the above, I find there is insufficient evidence to prove the Tenant knew he was required to pay for water usage. Therefore, the claim for water costs is dismissed, without leave to reapply. The Tenant accepted responsibility for natural gas costs; therefore, I award the Landlord natural gas costs of **\$289.47**.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Based on the aforementioned I find the Tenant has breached sections 32(3) and 37(2) of the Act, leaving the rental unit carpet unclean and the walls with some damage at the end of the tenancy.

Residential Tenancy Branch policy guidelines stipulate that a tenant is required to steam clean carpets at the end of a tenancy. Therefore, I find the Landlord has proven his claim and I award him carpet cleaning costs in the amount of **\$260.50**.

The Tenant disputes causing damage to the fridge and argued it was in good working order at the time he left the rental unit. The Landlord provided evidence that he purchased a new fridge on July 8, 2013, over two months after the tenancy ended. Therefore, in the presence of the Tenant's disputed testimony and in the absence of condition inspection report forms, I find there to be insufficient to prove the Landlord's claim for a damaged fridge. Therefore, the claim for a replacement fridge is dismissed, without leave to reapply.

As per the foregoing I find the Landlord has met the burden of proof and I award them damages in the amount of **\$562.99** (\$379.95 + 145.54 + 37.50).

The Landlord has been partially successful with their application; therefore I award recovery of the **\$100.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Loss of May and June 2013 rent	\$4,300.00
Natural Gas Utility	289.47
Carpet cleaning	260.50
Filing Fee	<u>100.00</u>
SUBTOTAL	\$4,949.97
LESS: Security Deposit \$1,110.00 + Interest 0.00	<u>-1,110.00</u>
Offset amount due to the Landlord	<u>\$3,839.97</u>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$3,839.97**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be 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: November 19, 2013

Residential Tenancy Branch

