



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Bros. Agencies Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

Tenant's application filed September 24, 2013: MNDC; MNSD; FF

Landlord's application filed October 10, 2013: MNDC; MNR; MNSD; FF

Introduction

This Hearing was scheduled to consider cross applications. The Tenant seeks compensation for damage or loss under the Act, regulation or tenancy agreement; return of the security deposit and to recover the cost of the filing fee from the Landlord.

The Landlord seeks a monetary award for unpaid rent and compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit towards its monetary award; and to recover the cost of the filing fee from the Tenant.

The parties and the Landlord's witness gave affirmed testimony at the Hearing.

The Tenant testified that she served the Landlords with the Notice of Hearing documents and copies of her documentary evidence by handing the documents to the Landlord's agent on September 24, 2013. The Tenant provided a second package of documentary evidence on December 5, 2013, which included an amended Application for Dispute Resolution. This was filed too late to amend the Tenant's Application; however, the Landlord's agents consented to go ahead with the Tenant's amended Application. Therefore, I considered the Tenant's Application as amended on December 5, 2013.

The Landlord's agents testified that they served the Tenant with their Notice of Hearing documents and copies of their documentary evidence, by registered mail, sent to the Tenant's address for service on October 11, 2013. The Tenant acknowledged receipt of the documents.

Preliminary Matters

The Landlord's Application for Dispute Resolution was missing the Tenant's full address and therefore, it was amended to include the suite number of her residence.

Issues to be Decided

- Is the Tenant entitled to compensation from the Landlord for the cost of moving, cost of alternative accommodation, a rent abatement and return of the security deposit?
- Is the Landlord entitled to unpaid rent for the month of June, 2013, and the cost of cleaning the rental unit at the end of the tenancy? May the Landlord apply the security deposit towards partial satisfaction of its monetary award?

Background and Evidence

This tenancy began on January 15, 2008. At the end of the tenancy, monthly rent was \$770.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$362.50 on January 8, 2008. The Landlord received the Tenant's forwarding address on September 27, 2013.

The Tenant gave the following testimony:

The Tenant testified that she and the former property manager (KL) met to perform a condition inspection at the beginning of the tenancy. The rental unit had fresh paint and the floors were newly refinished. The Tenant stated that there was no shower rod, door knobs were missing and that the blinds were not installed at the beginning of the tenancy. She stated that there was water damage to the bathroom ceiling, and that KL wrote it down on a piece of paper, separate from the Condition Inspection Report. The Tenant testified that KL assured the Tenant that the ceiling would be repaired before the Tenant moved in. The Tenant did not provide a copy of the separate piece of paper.

The Tenant testified that she first e-mailed the Landlord about water concerns on January 14, 2013, and that she sent copies of photographs of water damage to the Landlord on January 15, 2013. On February 1, 2013, a new property manager was hired (BS). The Tenant was advised that the damage was caused when an occupant in the upstairs suite failed to use a shower curtain.

On May 1, 2013, the Tenant e-mailed to Landlord to advise that a guest had observed that water was "pouring through my bathroom ceiling again" on April 29, 2013. The Tenant testified that on May 9, 2013, her Doctor confirmed that she had a chronic illness from mould and advised her to move. On May 13, 2013, the Tenant met with the Landlord's agents at the rental unit for an inspection of the rental unit. On May 22, 2013, the Tenant moved her belongings out of the rental unit. She wrote to the Landlord on June 3, 2013, requesting to be reimbursed for her moving expenses and the cost of alternative accommodation until the rental unit is habitable again.

On June 14, 2013, the Tenant returned to the rental unit to find that no repairs had been done. She advised the Landlord on June 15, 2013, that she was ending the tenancy. The Tenant did not pay any rent for the month of June, 2013.

The Tenant stated that a contractor advised her that the damage to the rental unit was large and that other occupants in the building might also be at risk of developing health problems.

The Tenant stated that the Landlord re-rented the rental unit for less than she paid, and therefore she is requesting "repayment of my overpayment" from January 15, 2008 to May 30, 2013.

The Tenant seeks a monetary award, calculated as follows:

Moving expenses	\$1,010.00
Return of security deposit and interest	\$367.83
The equivalent of 2 months' rent at new Residence	\$1,900.00
Rent overpayment from January 15, 2008 To May 30, 2013	<u>\$7,081.13</u>
TOTAL	\$10,358.96

In support of her application for a monetary award, the Tenant provided a copy of an invoice from the moving and storage company; a copy of the advertisement for the rental unit indicating rent of \$645.00, a copy of her new lease; and copies of Notices of Rent Increase.

The Landlord's agents and witness gave the following testimony:

The Landlord's agents testified that the Tenant did not advise the Landlord of any issues with respect to leaks in the rental unit until January of 2013. They stated that the Landlord had no record of any separate paper with KL's notes regarding water damage to the bathroom ceiling at the beginning of the tenancy.

In February, 2013, the Tenant e-mailed the Landlord advising that there were no more concerns with respect to water leaks.

The Landlord's agents stated that there was "some tardiness with respect to previous tradesmen", but that the leak was very small and was located around the pea trap under the drain of the tub in the suite above the rental unit.

The Landlord's witness KW testified that he is the contractor who repaired the leak on June 8, 2013. He stated that he fixed the leak in the tub area and then allowed the area to dry out. A few days later he went to the rental unit and cut out a section of the ceiling approximately 1 foot by 1 foot. KW stated that there were no visible signs of mould or mildew in the ceiling or anywhere else in the rental unit. KW then repaired the ceiling in the rental unit.

The Tenant asked KW how there could be water gushing from the ceiling if the leak was so tiny. KW stated that he had no idea, and that it was not possible that a tiny leak could have caused a gush of water.

The Landlord's agent BS stated that the problem was minor and that they were surprised because they had imagined it would be worse because of the Tenant's email in May, 2013. He stated that there was minor degradation of the joints, but no mildew or mould. BS testified that the leak would have amounted to a couple of teaspoons when the tub upstairs was draining.

BS submitted that the Tenant did her own research and that she thought the extent of repairs would be much larger than they were.

The Landlord provided a copy of an e-mail from the current occupant of the rental unit, dated December 3, 2013. The e-mail states that she moved into the rental unit in August, 2013, and that there was no mould in the bathroom at that time or any problem with mould since.

The Landlord is seeking a monetary award, calculated as follows:

Unpaid rent for June, 2013	\$770.00
Cost of cleaning rental unit (3 hours @\$15.00)	\$45.00
Plus GST	<u>\$2.25</u>
TOTAL	\$817.25

The Landlord provided copies of the invoices for the cost of cleaning and the repairs to the ceiling of the rental unit and drain in the suite above.

Analysis

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, the balance of probabilities.

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In the circumstances before me both parties have the burden of proving their claims.

I find that the Tenant did not provide sufficient evidence to prove that mould existed in the rental unit. The Tenant did not provide written confirmation from her Doctor with respect to mould related illness. The Tenant did not provide witness testimony or written testimony from her guest who saw the water gushing from the ceiling in April, 2013. The Tenant did not provide witness testimony or written testimony from her contractor to indicate that there was extensive water damage in the ceiling of the rental unit.

I find that the Tenant did not satisfy the first two elements of the test for damages and therefore her application for recovery of the cost of moving and the cost of two months' rent in her new location is dismissed without leave to reapply.

I find that the Tenant did not provide sufficient notice to end the tenancy, as required by Section 45 of the Act, and that the Landlord suffered a loss as a result of the Tenant's breach of the Act. Therefore, I allow the Landlord's claim for unpaid rent for the month of June, 2013, in the amount of **\$770.00**.

The Tenant agreed that she had not cleaned the rental unit before moving out, as required under Section 37 of the Act, and I accept that the rental unit required three hours of cleaning. Therefore, I allow that portion of the Landlord's claim in the amount of **\$47.25**.

I explained to the Tenant that she had signed a tenancy agreement with the Landlord in 2008, agreeing to rent the rental unit for \$725.00. I find that the Landlord gave due notice to increase the rent from time to time, in an amount that complies with the regulation. Therefore, the Tenant's application to recover a portion of the rent for the period of the tenancy is dismissed without leave to reapply.

Further to the provisions of Section 72 of the Act, the Landlord may apply the security deposit and the accrued interest towards its monetary award.

The security deposit has been extinguished and therefore, the Tenant's request for return of the security deposit is dismissed.

The Tenant's application has been dismissed in its entirety and therefore I find that she is not entitled to recover the cost of the filing fee from the Landlord.

The Landlord's application had merit and therefore I find that it is entitled to recover the **\$50.00** filing fee from the Tenant.

I hereby provide the Landlord with a Monetary Order, calculated as follows:

Unpaid rent for June, 2013	\$770.00
Cost of cleaning the rental unit	\$47.25
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$867.25
Less security deposit and accrued interest	<u>-\$367.83</u>
TOTAL	\$499.42

Conclusion

The Tenant's application is dismissed in its entirety, without leave to reapply.

I hereby provide the Landlord with a Monetary Order in the amount of **\$499.42** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: January 3, 2014

Residential Tenancy Branch

