



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

LANDLORD: OPR, MNR, MNSD, MNDC, FF
TENANT: MNSD, MNDC, FF

Introduction

This hearing is a review Hearing granted under a review consideration application by the Tenant dated November 6, 2013. The previous decision dated October 9, 2013 found for the Landlord and awarded the Landlord the Tenant's security deposit of \$437.50 and a monetary order for \$487.50. The award was for compensation for lost rental income due to the Tenant ending the tenancy without proper notice and for the filing fee of \$50.00.

Further the decision of October 9, 2013 dismissed the Tenant's application due to lack of evidence.

The Tenant was granted a review Hearing on the grounds that the Landlord may have gained the decision and Order by fraud. The review consideration decision states there was no finding of fraud, but the Tenant had established grounds to receive a review Hearing to rehear the applications.

Today's hearing will deal with cross applications for Dispute Resolution filed by both the Landlords and the Tenant.

The Landlords filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement, for unpaid rent, to retain the Tenant's security deposit and to recover the filing fee for this proceeding. The tenancy has ended therefore the request for an order of possession previously applied for is not applicable now.

The Tenant filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement, for the return of the Tenant's security deposit and to recover the filing fee for this proceeding.

Service of the review hearing documents by the Tenant to the Landlords were done by registered mail on December 2, 2013 in accordance with section 89 of the Act.

The Landlord confirmed that they had received the Tenant's Notice of hearing documents.

At the start of the Hearing the Landlord said he was frustrated with the review application being approved and that a review Hearing was taking place. The Landlord continued to say the original Arbitrator had reviewed the evidence and had made a decision on the testimony of both parties. Further the Landlord said he did not lie and he did not commit fraud.

Issues to be Decided

Landlord:

1. Are there damages or losses to the Landlords and if so how much?
2. Are the Landlords entitled to compensation for damage or loss and if so how much?
3. Is there unpaid rent or loss of rental income and if so how much?
4. Are the Landlords entitled to unpaid rent or loss of rental income and if so how much?
5. Are the Landlords entitled to retain the Tenant's security deposit?

Tenant:

1. Are there damages or losses to the Tenant and if so how much?
2. Is the Tenant entitled to compensation for loss or damage and if so how much?
3. Is the Tenant entitled to the return of the security deposit?

Background and Evidence

This tenancy started on October 1, 2012 as a month to month tenancy. Rent was \$875.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$437.50 in advance of the tenancy.

The Tenant said that she made her application as a rebuttal to the Landlords' application because she did not believe that she owed the Landlord the July, 2013 rent of \$875.00. The Tenant said she moved out of the rental unit because the Landlord told her that she should move out if she was unhappy in the rental unit or did not want to cooperate with him. The Tenant continued to say that because of these comments the Landlord made she felt threatened, harassed and unsafe in the rental unit. The Tenant said the Landlord's behaviour was harassing and threatening.

The Tenant continued to say the Landlord harassed her because of her daughter visiting because the Landlord believed that the daughter had move into the unit. The

Tenant said her daughter was only visiting while she was preparing to move out of country. As well the Tenant said the Landlord appeared to be threatening her when he said he could have her car towed away. The Tenant submitted 55 + minutes of audio that does confirm the Landlord said to the Tenant she could move if she was not happy in the rental unit and there was talk about the Tenant not parking in the Landlord's driveway and about the parking issues.

As a result of these discussions with the Landlord the Tenant gave written notice on June 30, 2013 that she was moving out of the rental unit on June 30, 2013. The Tenant said she did not discuss a mutual end of tenancy with the Landlord and she understood that she did not give the Landlord proper notice to end the tenancy. The Tenant said that the Landlord's behaviour towards her and her daughter was grounds to end the tenancy without proper notice.

The Tenant continued to say that she submitted written evidence and audio of the discussions with the Landlord to show that he harassed and threatened her.

The Tenant said she is claiming \$740.93 for moving costs, \$315.19 in storage costs and \$162.00 in lost wages. The Tenant also requested to recover the filing fee of \$50.00 from the Landlord.

The Landlord said he does not have the Tenant's evidence from the original hearing so he could not review the audio, but he believed the previous Arbitrator did and found nothing that was threatening or harassing. The Landlord said he did not threaten or harass the Tenant and he did not give the Tenant a Notice to End Tenancy. The Landlord said he did not try to end the tenancy although he suggest the Tenant could move out and the Landlord did say if the Tenant wanted to move it was fine with him.

The Landlord continue to say this hearing is about the Tenant not giving proper notice to end the tenancy and because the Tenant did not give proper notice the Tenant is responsible for the rent for the month of July, 2013 in the amount of \$875.00.

The Landlord continued to say he also applied for compensation for cleaning of \$ 40.00 and for rekeying the locks in the amount of \$45.00, but he did has not submitted any supporting evidence for these claims.

Analysis

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45 of the Act says a Tenant may end a period term tenancy in writing and the notice must be at least one month prior to the date that rent is payable or with the agreement of the Landlord.

The Tenant did not give the Landlords proper notice to end the tenancy and the Tenant does not have the right under the Act to withhold part or all of the rent. As well I find the Tenants audio and written evidence does not support the Tenant's claim that the Landlord's behaviour was serious enough to consider it threatening or harassing. The audio evidence shows that the Landlord and the Tenant had two separate discussions about the tenancy and the behaviour of both parties I found to be spirited, but not to the level of threatening or harassing. Consequently, I find the Tenant has not established grounds to end the tenancy early because of the Landlord's behaviour. As a result I find the Tenant ended the tenancy without proper notice and I find the Tenant is responsible for the July, 2013 rent of \$875.00.

Further as the Tenant ended the tenancy by her own choice; I find the Landlord is not responsible for the Tenant's claims for moving costs, storage costs and lost wages. I dismiss the Tenant's application without leave to reapply.

With regard to the Landlord's claims for rekeying the doors in the amount of \$45.00 and for cleaning the rental unit in the amount of \$40.00; I find that the Landlord most probably incurred these costs, but he did not support the claims with written evidence; therefore I dismiss these claims without leave to reapply.

As the Landlords have been partially successful in this matter, they are also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the lost rental income. The Landlord will receive a monetary order for the balance owing as following:

	Lost rental income:	\$ 875.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$ 925.00
Less:	Security Deposit	\$ 437.50	
	Subtotal:		\$ 437.50
	Balance Owing		\$ 487.50

As the Tenant was unsuccessful in this matter I order the Tenant to bear the \$50.00 cost of the filing fee for her application that she has already paid.

Conclusion

As a decision and an Order both dated October 9, 2013 have already been issued to the Landlord to retain the Tenant's security deposit of \$437.50 and for a monetary order for \$487.50: I concur with the original decision of October 9, 2013 and I remove the suspension put in place in the review decision of November 15, 2013.

The Monetary Order dated October 9, 2013 in the amount of \$487.50 is in full affect. A copy of the Order must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 14, 2014

Residential Tenancy Branch

