



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MND, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for alleged damage to the rental unit and unpaid rent, for authority to retain the tenants' security deposit and for recovery of the filing fee.

The landlord attended the telephone conference call hearing; the tenants did not attend.

The landlord testified that he served each tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on September 12, 2013. The landlord supplied the receipts and customer receipts showing the tracking number of each of the registered mail envelopes.

Based upon the submissions of the landlord, I find the tenants were served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenants' absence.

The landlord was provided the opportunity to present his evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to retain the tenants' security deposit, further monetary compensation, and to recover the filing fee?

Background and Evidence

The undisputed evidence of the landlord shows that the parties entered into a 1 year, fixed term tenancy, beginning April 12, 2013, to run through April 30, 2014, the tenancy actually ended on August 31, 2013, when the tenants vacated the rental unit, monthly rent was \$1200, and the tenants paid a security deposit of \$600 on or about April 8, 2013.

The landlord's monetary claim listed in their application was \$10,081, which included \$9600 for loss of rent revenue for the remainder the fixed term through April 30, 2013, carpet cleaning for \$120, electrical repair for \$80, cleaning for \$45, glass replacement for \$100, filing fee of \$100, and postage fees of \$36.

In the hearing, the landlord stated that he was now only seeking loss of rent revenue for two months, September and October, not through the end of the fixed term, as new tenants commenced a subsequent tenancy on November 1, 2013.

The landlord's relevant documentary evidence included a written tenancy agreement, a condition inspection report, a letter to the tenants proposing deductions from their security deposit, a 1 Month Notice to End Tenancy for Cause (the "Notice") issued to the tenants on July 29, 2013, for an effective end of tenancy date of August 31, 2013, pictures of the tenants' dogs, of electrical damage, of dirty walls and a cracked glass, a receipt for carpet shampooing, an electrician's bill, an invoice for glass replacement, a cleaning bill, advertisements, and postage costs.

In support of his application, the landlord submitted that he was entitled to loss of rent revenue as the tenancy ended earlier than the end of the fixed term. The landlord also claimed that he minimized his loss as he advertised the rental unit and was successful in re-renting for November 2013.

The landlord submitted that due to the tenants obtaining pets and not paying a pet damage deposit, on July 29, 2013, he issued the tenants a 1 Month Notice, ending the tenancy on August 31, 2013.

In response to my question, the landlord confirmed that he advertised the rental unit for more than the monthly rent the tenants were paying, as he added a retaining wall and made improvements to the rental unit, which allowed for an increased monthly rent.

The landlord also submitted that the tenants were responsible for damage to an electrical outlet, due to a hair iron use, and a cracked window. The landlord further submitted that the tenants failed to properly clean the rental unit, requiring a cleaner to be hired, and to professionally shampoo the carpet, as required by the tenancy agreement.

In response to my question, the landlord did not know if the house has had an electrical upgrade since it was built in 1977.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Loss of rent revenue-Section 44 of the Act lists several ways in which a tenancy ends, including when a landlord issues the tenant a notice to end the tenancy pursuant to section 47 of the Act for alleged cause, as is the case here.

As the landlord has elected to end the tenancy as of August 31, 2013, and the tenants chose to accept the end of the tenancy listed on the Notice, I find the tenancy ended on August 31, 2013, rather than the end of the fixed term at the landlord's election and therefore the tenants were no longer obligated under the terms of the tenancy agreement to pay monthly rent.

I therefore dismiss the landlord's monetary claim for loss of rent revenue for September and October 2013.

Had I not dismissed the landlord's claim by his ending the tenancy on August 31, 2013, I would still make the decision to dismiss the landlord's claim as I find the landlord failed to begin advertising the rental unit immediately when he knew the tenancy would end, in this case on or about July 29, 2013, when he issued the tenants the Notice ending the tenancy on August 31. The landlord's evidence shows that the earliest the rental unit was advertised was September 6, 2013. Additionally, the landlord asked for an increase in monthly rent. I find the landlord's delay in advertising the rental unit and asking for more in monthly rent shows that the landlord failed to take reasonable steps to minimize his loss, step 4 of his burden of proof.

Electrical damage-I find the landlord failed to submit proof that the tenants' actions or neglect caused an electrical outlet to burn out, as shown in his photographic evidence, as I find infrastructure matters are the landlord's responsibility otherwise.

I have no evidence that the tenants misused the outlet as I find use of a hair iron to be a reasonable use. I also considered that electrical wiring under the Residential Tenancy Branch ("RTB") Guideline 40 has a useful life of 15 years. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item and, as the landlord failed to prove the wiring was newer than from the year 1977, I therefore I find that the electrical wiring was fully depreciated.

I therefore dismiss the landlord's claim for \$80 for electrical repair.

Cleaning-I find the landlord submitted sufficient evidence that the rental unit required some cleaning and I approve his claim for \$30.75, as shown by his receipt.

Carpet shampooing-I approve the landlord's claim for carpet shampooing for \$105, as shown by his receipt, as I find no evidence that the tenants provided for the shampooing, as required by the written tenancy agreement.

Broken glass-I find the landlord's evidence of the condition inspection report to be inconclusive as to whether the tenants broke a window in bedroom 1 as claimed. In reaching this decision, I considered that there is no notation or statement of condition of bedroom 1 at the move-in, and only a hand written inclusion concerning bedroom 1 at the move-out inspection, when the bedroom was added to the list of rooms, showing a cracked window. Additionally, the tenant attending the move-out inspection wrote that the crack referred to was the same size as the 11 other cracks.

Postage fees-An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act, but "costs"

incurred with respect to filing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. As a result, this portion of the claim is denied.

As the landlord's application was partially successful, I award the landlord recovery of a partial filing fee, in the amount of \$50.

Due to the above, I find the landlord is entitled to a total monetary award of \$185.75, comprised of cleaning for \$30.75, carpet shampooing for \$105 and the filing fee of \$50.

Conclusion

The landlords' application for monetary compensation is granted in part.

I direct them to retain from the tenants' security deposit of \$600 the amount of their monetary award of \$185.75 in satisfaction of their monetary award.

I direct the landlord to return the balance of the tenants' security deposit being held in trust for the tenants, in the amount of \$414.25, and I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$414.25, which I have enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

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* and is being mailed to both the applicant and the respondents.

Dated: January 07, 2014

Residential Tenancy Branch

