



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MND, MNDC, MNSD, FF
MNR, MNDC, MNSD

Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as compensation for unpaid rent or utilities / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit and pet damage deposit / and recovery of the filing fee; and ii) by the tenants for a monetary order as compensation for emergency repairs / compensation for damage or loss under the Act, Regulation or tenancy agreement / and return of the security deposit and pet damage deposit.

An agent representing tenant “AS” attended the hearing and gave affirmed testimony. Despite the initial scheduling of the hearing in response to an application by the landlord, the landlord did not appear.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

In response to the tenants’ application, a hearing was scheduled for October 16, 2013. In response to the landlord’s application, a hearing was scheduled for January 7, 2014.

Both parties attended the hearing scheduled for October 16, 2013, and it was agreed that the hearing would be adjourned in order that applications filed by both parties could be heard at the same time. In this regard, an Interim Decision was issued by date of October 16, 2013. In part, the Interim Decision reads as follows:

...the present hearing is adjourned and both applications will be heard together as cross applications during the hearing scheduled in January 2014. Under separate cover, a new notice of hearing will be mailed to the parties by the Residential Tenancy Branch.

Subsequently, the new notice of hearing was mailed to both parties. However, as noted above, while an agent representing tenant "AS" attended the hearing, the landlord did not appear.

Pursuant to a written tenancy agreement, the fixed term of tenancy is from September 1, 2012 to September 1, 2013. After the end of the fixed term, the agreement provides that tenancy will continue on a month-to-month basis. Monthly rent of \$1,100.00 was due and payable in advance on the first day of each month. A security deposit of \$550.00 and a pet damage deposit of \$250.00 were collected. There is no move-in condition inspection report in evidence.

There is only 1 tenant identified on the tenancy agreement: tenant "LS," who is "AS's" mother. However, "AS's" agent testified that "LS" and "AS" both resided in the unit from the very start of tenancy. "AS's" agent also testified to her understanding which is that "LS" vacated the unit and relocated to Ontario in April 2013, and that "AS" continued to reside in the unit.

Arising from rent which remained unpaid when due on May 1, 2013, the landlord issued a 10 day notice to end tenancy for unpaid rent. While there is a photograph of the notice in evidence, it is unclear when it is dated or what amount of rent it documents as overdue. It is understood that the notice was served by way of posting on the unit door on May 8, 2013.

Subsequently, it is understood that "AS" made no further payment toward rent, and that in early to mid June 2013 the landlord contacted Police who attended and entered the unit with the landlord. On that occasion the landlord claims to have determined that "LS" had abandoned the unit, and claims to have determined that "AS" had been residing there. The landlord also claims that the unit was a "horrible mess," and that Police removed drug paraphernalia as well as a dog.

There is no evidence that "LS" provided the landlord with a forwarding address. There is no evidence that "AS" provided the landlord with an address until such time as the tenants filed an application for dispute resolution on July 12, 2013, and served the application and notice of hearing (the "hearing package") on the landlord. Thereafter, the landlord's application was filed on October 9, 2013.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and the affirmed / undisputed testimony of “AC,” the agent representing “AS,” the respective claims and my findings are set out below.

TENANTS

\$10,000.00: compensation for miscellaneous possessions allegedly removed from the unit by the landlord, and discarded by the landlord without authorization; compensation for emergency repairs

Documentary evidence submitted by the tenants is limited to the application for dispute resolution. There is no detailed inventory of possessions allegedly removed from the unit, or the estimated value of any specific possessions, or the estimated age of any specific possessions, or a description of the condition of any specific possessions at the time when they were allegedly removed from the unit. Additionally, there are no receipts. In the absence of sufficient evidence, this aspect of the claim is dismissed.

The tenants have not applied to recover the filing fee.

Return of security deposit and pet damage deposit

See below.

LANDLORD

\$1,100.00: unpaid rent for May 2013

In the absence of sufficient evidence, or any appearance by the landlord or his agent at the hearing scheduled in response to the landlord's application, this aspect of the application is hereby dismissed.

\$1,100.00: unpaid rent for June 2013

For reasons identical to those set out immediately above, this aspect of the application is hereby dismissed.

\$1,091.47: repairs and painting

\$325.00: cleaning

\$480.00: dumping

\$435.00: storage and truck rental

Further to reasons identical to those set out above, in the absence of any receipts, or the comparative results of move-in and move-out condition inspection reports, these aspects of the application are hereby dismissed.

\$100.00: *filing fee*

As the landlord has not succeeded with the main aspects of his application, the application to recover the filing fee is hereby dismissed.

Retention of security deposit and pet damage deposit

See below.

As previously noted, the only tenant identified on the tenancy agreement is "LS." There is insufficient evidence for me to make any finding around how long "AS" may have resided in the unit, or to conclude that "AS" is a tenant within the meaning of that term in the Act. Further, there is insufficient evidence for me to conclude that "LS" delegated authority to "AS" to act on her behalf. Following from all the foregoing, I find that the address provided by "AS" in his application for dispute resolution is not a forwarding address for the purposes of section 38 of the Act, which speaks to **Return of security deposit and pet damage deposit**. In the result, the respective applications which concern the disposition of both deposits are hereby dismissed with leave to reapply. In the meantime, the parties are referred to the provisions set out in section 38 of the Act.

Conclusion

The respective applications concerning the security deposit and pet damage deposit are hereby dismissed with leave to reapply. All other aspects of the respective applications are hereby dismissed.

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 08, 2014

Residential Tenancy Branch

