



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNQ, DRI, MNSD, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. For a monetary order for money owed or compensation under the Act;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. Return all or part of the security deposit;
2. Tenant does not qualify for subsidized housing;
3. Dispute an additional rent increase; and
4. To all a tenant more time to make and application to cancel a notice to end tenancy.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary matter

At the outset of the hearing, the student stated the tenant had listed several issues in their application in error. The student confirmed the issue of the return of the security deposit is the only issue to be dealt with in the tenant's application.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the tenant entitled to the return of the security deposit?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to a monetary order for damages?

Background and Evidence

The parties entered into a fixed term tenancy which began on September 6, 2013 and was to expire on August 31, 2013. Rent in the amount of \$1,560.00 was payable on the first of each month. A security deposit of \$780.00 was paid by the tenant. The tenancy ended on May 31, 2013.

Landlord's application

Cleaning cost

The landlord claims as follows:

a.	Cleaning cost	\$ 252.00
b.	Loss of rent for 17 days in June	\$ 844.00
g.	Filing fee	\$ 50.00
	Total claimed	\$ 1,136.00

Cleaning cost

At the outset of the hearing, the tenant agreed to pay the cleaning cost as these were cost that she would have incurred in any event.

Loss of rent for 17 days in June

The landlord's agent testified that the tenant breached the fixed term tenancy agreement, when she gave notice to end the tenancy on May 1, 2013 for an effective vacancy date of May 31, 2013.

The landlord's agent testified that they are claiming for 17 days of loss revenue because the property was transferred to new owners on June 18, 2013.

The student stated that the tenant gave notice to end the tenancy, however, there was an agreement with the landlord that they would both try to find a new renter to take over the balance of her lease.

The student stated a new renter was located and they were going to enter into a contract, however, they were informed that the rent was going to be at least \$1,700.00.

The student stated that the landlord failed to mitigate there loss, when they did not enter into a contract with the potential new renter at the same rate of rent and it was only because the landlord was seeking a substantial rent increase that the new renter decided it was too expensive.

Filed in support of the tenant is a sworn affidavit of (PY), which in part reads,

"I saw Ms. [name] advertisement listed on the website [name removed].. I was interested in renting the listed apartment starting June 2013..I called the number and confirmed the price was \$1600 per month.. I went to the apartment and met [tenant]..I asked her about her rental agreement and she said her rent was \$1560. I realized Ms. [name] had raised the rent, but I was still considering renting the apartment.. I called Ms [name] and asked her if the rent could be \$1560 and she said no. In fact, Ms [name] said the price might change because she had sold the apartment to a new landlord already... contact the agent for the new landlord and she told me that the rental price was increased to at least \$1700. I felt the price was too expensive and I did not want to absorb [tenant name] contract anymore."

[Reproduced as written.]

Filed in support of the tenant is a text message dated May 27, 2013, from the landlord's agent to the tenant, which in part reads,

"..sorry to get back to u so late, the apartment is sold. Now the lady u met, ..wants to rent out the apartment for \$1700 per month.."

[Reproduced as written.]

The landlord's agent argued that they had no control over what the new landlord would charge for rent.

Tenant's application

The student stated that the tenant provided the landlord with her forwarding address in writing on June 4, 2013. Filed in evidence is a copy of the letter.

The landlord's agent acknowledged that they received the tenant's forwarding address in writing in June 2013. The agent stated they did not return the security deposit because they felt justified to keep it, as the tenant had breached the fixed term agreement.

The landlord's agent stated they did not file an application for dispute resolution within 15 days of receiving the tenants forwarding address.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

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

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

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant 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. In this case, the landlord has the burden of proof to prove their claim.

Landlord's application

Cleaning cost

At the outset of the hearing the tenant agreed to pay the landlord the cost of cleaning. Therefore, I find the landlord is entitled to recover the cost of cleaning in the amount of **\$252.00**.

Loss of rent for 17 days in June

Section 45 of the Residential Tenancy Act states:

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based,

In this case, the evidence of both parties was that the tenant gave notice to end the tenancy effective May 31, 2013. However, under the Act the tenant was not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement. I find the tenant has breached section 45(2) of the Act as the earliest date they could have legally ended the tenancy was August 31, 2013.

As a result of the tenant not complying with the terms of the tenancy agreement or the Act the landlord suffered a loss of rent for June 2013. The landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the tenancy agreement or Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy.

However, under section 7 of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

In this case, I find the affidavit of (PY) and the text message received by the tenant supports the landlord failed to mitigate their loss, when they significantly increased the rent.

The agent argue that they had no control of what the new owner would charge for rent, I find that position unreasonable as they were the property owners at the time when the tenant received the text message increasing the rent.

As a result, I find the landlord failed to make reasonable efforts to minimize the loss. Therefore, I find the landlord is not entitled to recover loss of rent from June 1 to June 17, 2013.

I find that the landlord has established a total monetary claim of **\$302.00** comprised of the above described amount and the \$50.00 fee paid for this application.

Tenant's application

Section 38(1) of the Act states the landlord within 15 days after the tenancy ends or the date the landlord receives the tenants' forwarding address in writing, must do one of the following, repay the security to the tenant or make an application for dispute resolution claiming against the security deposit.

In this case the landlord's agent acknowledged that they received the tenant's forwarding address in June 2013. The landlord's agent acknowledged they did not return the security deposit or make an application to claim against the security deposit within 15 days as required by the Act. I find the landlord has breach section 38(1) of the Act.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38(6) of the Act, that the landlord pay the tenant the sum of \$1,610.00 comprised of double the security deposit (\$780.00) and the \$50.00 fee for filing this Application.

Conclusion

Having made the above findings on the respective applications, I order that the landlord's monetary claim of **\$302.00** be deducted from the tenant's monetary claim of **\$1,610.00** in full satisfaction of their claim. The tenant is granted a monetary order for the balance due of **\$1,308.00**.

The tenant is given a formal order should the landlord fail to comply with this order the order may be filed in the small claims division of the Provincial 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: January 29, 2014

Residential Tenancy Branch

