



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

On January 08, 2014 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing an Application for Dispute Resolution.

On November 28, 2012 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for the return of all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent/loss of revenue, to compensation for damage to the rental unit, and to retain all or part of the security deposit paid by the Tenant?

Is the Tenant entitled to compensation for moving costs and a rent refund, and should the security deposit be returned to the Tenant?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on May 15, 2013; that the Tenant agree to pay monthly rent of \$1,200.00 by the fifteenth day of each month; and that the Tenant paid a security deposit of \$600.00.

The Landlord and the Tenant agree that on October 04, 2013 they signed a written agreement, which has been signed by both parties, which outlines the following terms:

- The Tenant will vacate the rental unit "by or before" November 30, 2013
- The Tenant will be entitled to "stay for free for two full months of \$2,400.00
- If the Tenant moves prior to November 30, 2013 the Landlord will "pay back the balance of the remaining time"
- The term of the agreement is from October 01, 2013 to November 30, 2013
- The Tenant has paid rent "regularly" from May 15, 2013 to October 15, 2013.

The Landlord and the Tenant each has a copy of this written agreement and they are seeking to have the terms of the agreement enforced. The Tenant contends they are entitled to compensation of two month's rent (\$2,400.00), even though they remained in the rental unit until October 31, 2013 and the Landlord contends that the Tenant must pay for one month's rent (\$1,200.00).

The Landlord and the Tenant agree that this tenancy ended on October 31, 2013. The Agent for the Tenant stated that rent of \$1,200.00 was paid on October 15, 2013 and the Landlord contends that no rent was paid on October 15, 2013. The Tenant submitted no evidence to corroborate the claim that rent was paid on October 15, 2013.

The Landlord and the Tenant agree that on October 04, 2013 they signed a second written agreement, in which the Landlord agreed to pay the Tenant moving expenses of "up to \$600.00". The Landlord and the Tenant each has a copy of this written agreement and they are seeking to have the terms of the agreement enforced.

The Agent for the Tenant stated that the Tenant incurred expenses of over \$600.00 for moving. He stated that the Tenant has a receipt from a moving company that shows she paid \$570.00 for moving and storage costs. The Agent for the Tenant stated that no receipts for moving costs were served to the Landlord.

The Landlord and the Tenant agree that the Tenant provided the Landlord with a forwarding address, in writing. The Agent for the Tenant stated that it was mailed to the Landlord on October 31, 2013. The Landlord does not recall when it was received, although the Landlord believes it was received sometime near the end of November of 2013.

The Landlord and the Tenant agree that the security deposit has not been returned to the Tenant.

The Agent for the Tenant stated that the Tenant did not give the Landlord permission to retain any portion of the security deposit. The Advocate for the Tenant stated that the written agreement dated October 04, 2013 serves as written permission to retain the

deposit, as the agreement declares that the Landlord will return “the full amount of the damage deposit of \$600.00 when they get the suite inspected with no damages”.

The Landlord is seeking compensation for unpaid utilities, in the amount of \$117.51. The Landlord and the Tenant agree that the Tenant was obligated to pay 1/3 of the gas and hydro costs incurred during the tenancy. The Landlord submitted a copy of a hydro bill, in the amount of \$106.00 and a gas bill, in the amount of \$100.87. The Landlord and the Tenant agree that the Tenant's portion of these two bills has not been paid.

The Landlord submitted a copy of a gas bill, in the amount of \$56.69. The Agent for the Tenant stated that the Tenant has paid the Tenant's portion of this bill. The Advocate for the Landlord stated that her mother is not certain if the Tenant's portion of this bill has been paid.

The Landlord submitted a copy of a hydro bill, in the amount of \$92.53. The Agent for the Tenant stated that the Tenant has paid the Tenant's portion of this bill. The Advocate for the Landlord stated that her mother is not certain if the Tenant's portion of this bill has been paid.

The Landlord is seeking compensation, in the amount of \$199.50, for cleaning the carpet. The Advocate for the Landlord stated that the carpet was in need of cleaning at the end of the tenancy. The Agent for the Tenant stated that he personally cleaned the carpet with a steam cleaner at the end of the tenancy. The Landlord submitted no photographs of the carpet.

The Landlord is seeking compensation, in the amount of \$240.00, to repair a ceiling. The Landlord and the Tenant agree that the Tenant removed a light in the living room that was provided with the tenancy; that the Tenant replaced that light with their own chandelier; and that the Tenant took the chandelier with them at the end of the tenancy.

The Advocate for the Landlord stated that the Tenant made several holes in the ceiling when they installed the new chandelier; that the Landlord spent 10-12 hours repairing the holes; and that the Tenant did not reattach the light that had been in place at the start of the tenancy.

The Agent for the Tenant stated that the Tenant did reattach the light that had been in place at the start of the tenancy and that there was only one hole in the ceiling that needed to be repaired as a result of the Tenant installing the chandelier.

The Landlord submitted a copy of a letter from the Landlord's realtor, in which the realtor declares that when the Tenant moved out they “left the ceiling with some wholes and open area. That caused you to fix the ceiling and cover this area up with almost the same kind of chandelier”.

The Landlord stated that this letter was served to the Tenant with other documents that were served to the Tenant as evidence for these proceedings. The Agent for the

Tenant stated that this particular document was not served to the Tenant. The document was read to the Tenant.

The Tenant was given the opportunity to request an adjournment if the Tenant wished to physically view the letter from the realtor. The Agent for the Tenant stated that the Tenant did not wish to physically view this document.

Analysis

On the basis of the written agreement, dated October 04, 2013, which was submitted in evidence and which is in the possession of each party, I find that the Landlord and the Tenant agreed that the Tenant would vacate the rental unit on, or before, November 30, 2013. On the basis of the undisputed evidence, I find that the Tenant vacated the rental unit on October 31, 2013.

On the basis of the written agreement, dated October 04, 2013, I find that the Landlord agreed to permit the Tenant to remain in the rental unit for two months "for free" and to pay the "balance of the remaining time" if the Tenant moves prior to November 30, 2013.

On the basis of the written agreement, dated October 04, 2013, I find that the Tenant paid rent for the period ending on October 15, 2013.

I find that the Tenant submitted insufficient evidence to show that the Tenant paid rent on October 15, 2013. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Agent for the Tenant's testimony that it was paid or that refutes the Landlord's position that it was not paid. In reaching this conclusion I was influenced, in part, by the written agreement, dated October 04, 2013. Given that this agreement indicates the Tenant was not obligated to pay rent on October 15, 2013, I find it unlikely that the Tenant would have paid rent on that date.

As the Tenant paid rent for the period between October 01, 2013 and October 14, 2013 and the written agreement, dated October 04, 2013, clearly stipulates that the Tenant will not have to pay rent for those dates, I find that the Tenant is entitled to a rent refund of \$600.00, which is the equivalent of $\frac{1}{2}$ of one month's rent.

As the Tenant occupied the rental unit for the period between October 15, 2013 and October 31, 2013 without paying rent, I find that the Tenant has been compensated for that period in accordance with the written agreement dated October 04, 2013.

As the Tenant did not occupy the rental unit in November of 2013 and the written agreement dated October 04, 2013 clearly indicates that the Landlord will pay the Tenant for the "balance of the remaining time", I find that the Landlord must pay the Tenant \$1,200.00, which is the equivalent of one month's rent.

On the basis of the written agreement, dated October 04, 2013, which was submitted in evidence and which is in the possession of each party, I find that the Landlord agreed to compensate the Tenant for her moving expenses, up to a maximum of \$600.00. In my view, this agreement requires the Tenant to establish the costs of moving: it is not an offer to pay \$600.00 to the Tenant for moving.

I find that the Tenant has submitted insufficient evidence to establish the moving expenses incurred by the Tenant. In reaching this conclusion I was heavily influenced by the undisputed fact that the Tenant did not serve any receipts to the Landlord to show the amount of moving expenses the Tenant incurred. In the absence of receipts to establish the moving expenses incurred, I find that the Landlord is not obligated to pay for the moving costs of the Tenant.

On the basis of the Tenant's testimony that a forwarding address for the Tenant was mailed to the Landlord on October 31, 2013 and on the Landlord's testimony that it was received by the end of November, I find it reasonable to conclude that the Landlord had a forwarding address for the Tenant, in writing, by November 30, 2013.

Section 38(4)(a) of the *Residential Tenancy Act (Act)* authorizes a landlord to retain an amount from a security deposit or a pet damage deposit if at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. I find that the written agreement dated October 04, 2013 does not serve as an agreement that the Landlord can retain an amount of the security deposit to pay a liability or obligation. Rather, this term of the agreement simply clarifies that the Landlord will return the deposit if there are no damages at the end of the tenancy.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord did not repay the security deposit or file an Application for Dispute Resolution within 15 days after the date the tenancy ends and the date the landlord receives the Tenant's forwarding address in writing.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit that was paid, which is \$1,200.00.

On the basis of the undisputed evidence, I find that the Tenant was obligated to pay 1/3 of gas and hydro bills incurred during the tenancy. On the basis of the undisputed evidence, I find that the Tenant's portion of the \$106.00 hydro bill and the \$100.87 gas bill has not been paid. I therefore find that the Tenant must pay the Landlord \$35.33 for the hydro bill and \$33.62 for the gas bill.

As the Landlord is not certain if the Tenant paid the Tenant's portion of the \$56.69 gas bill or the \$92.53 hydro bill and the Agent for the Landlord testified the Tenant's portion has been paid, I find that the Landlord has submitted insufficient evidence to show that any portion of these bills is outstanding. I therefore dismiss the Landlord's claim for compensation for any portion of these bills.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Landlord has submitted insufficient evidence to establish that the carpet required cleaning at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs, that corroborates the Landlord's claim that the carpet needed cleaning or that refutes the Tenant's claim that the carpet was cleaned at the end of the tenancy. In determining this claim I have placed little weight on the receipt for carpet cleaning that was submitted in evidence. In my view, this receipt simply shows that the Landlord opted to clean the carpet, it does not show that cleaning was necessary. For these reasons, I dismiss the Landlord's claim for cleaning the carpet.

On the basis of the undisputed evidence, I find that the Tenant installed a chandelier in the living room during the tenancy, which caused some damage to the ceiling. I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the damaged ceiling. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*.

I find, on the balance of probabilities, that the Tenant did not replace the original living room light at the end of the tenancy. In reaching this conclusion I was influenced by the letter from the realtor. Although the realtor's letter is not entirely clear, I find that the declaration that the ceiling was left with some "open area" and that the area needed to be covered with "almost the same kind of chandelier" tends to support the version of events presented by the Landlord.

I therefore find that the Landlord is entitled to compensation for the time spent repairing the ceiling and replacing the light. As the Advocate for the Landlord estimated 10-12 hours were spent repairing the ceiling, I grant the Landlord compensation for 11 hours of labour, at \$20.00 per hour, which is \$220.00.

I find that the Landlord's Application for Dispute Resolution has some merit and that the Landlord is entitled to recover the fee for filing an Application for Dispute Resolution. I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee for filing an Application for Dispute Resolution.

Conclusion

The Tenant has established a monetary claim, in the amount of \$3,050.00, which is comprised of \$1,800.00 in compensation for moving out prior to November 30, 2013; double the security deposit, which is \$1,200.00; and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

The Landlord has established a monetary claim, in the amount of \$338.95, which is comprised of \$220.00 for repairing the ceiling; \$68.95 for unpaid utilities; and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

After offsetting the two claims, I find the Landlord owes the Tenant \$2,711.05 and I grant the Tenant a monetary Order for this amount. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims 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: March 03, 2014

Residential Tenancy Branch

