



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on November 14, 2013, by the Landlord to obtain a Monetary Order for: unpaid rent; to keep the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. The Landlord affirmed that he did not serve the Tenant with copies of his evidence and he did not receive any evidence from the Tenant. The Tenant stated that he has been out of town and could not mail his evidence to the Landlord because it would arrive too late. He stated that he attempted to deliver it to the Landlord at the rental building and when he could not gain access he taped it to the door of the building.

Section 88 of the *Act* provides how evidence may be served while the *Residential Tenancy Branch Rules of Procedure 3.1 and 4.1* stipulate when evidence is to be served upon the other party. Considering evidence that has not been served on the other party or not received by the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore, as neither party received evidence from the other, I find that neither the Landlord's nor the Tenant's documentary evidence can be considered in my decision. I did however consider the Landlord's and Tenant's testimony.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to a Monetary Order in accordance with section 67 of the Act?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on October 1, 2011 that switched to a month to month tenancy after June 30, 2012. Rent started at \$850.00 per month and was subsequently increased to \$881.00 effective June 1, 2013. On September 17, 2011 the Tenant paid \$425.00 as the security deposit. The Tenant inspected the rental unit prior to moving in and the condition inspection report form was completed and signed a few weeks later.

The Landlord testified that two or three months into the tenancy the Tenant requested permission to paint the unit. The Landlord said he agreed and offered to reimburse the Tenant for the cost of the paint. He argued that he told the Tenant not to paint the unit with dark colors but the Tenant did not listen and painted the unit dark green, blue, and a yellow/orange color. The Landlord is claiming costs to re-paint the unit a lighter color.

The Landlord submitted that on October 5, 2013, the Tenant came to his door and told him he would be moving out at the end of the month. The Landlord said he told the Tenant that he would be losing his security deposit because of the late notice and requested that the Tenant put his notice to end the tenancy in writing so the Landlord would have permission to show the unit to prospective tenants. The Landlord argued that he never received a written notice. On November 1, 2013, the Tenant knocked on his door and handed him the keys to the unit, said that Molly Maid had cleaned the unit, and gave him a piece of paper with his forwarding address.

The Tenant testified that he asked the Landlord to paint the unit and his request was refused. So a few weeks into the tenancy he asked the Landlord if he could do the painting and permission was granted. He denies painting the unit dark colors and argued that they are all off white or light beige. He is a contractor experienced in painting and could provide testimony as to the exact paint codes used, if required.

The Tenant stated that he attended the Landlord's unit on October 1, 2013, not October 5th, and asked what he needed to do to end his tenancy. He said the Landlord was on a conference call and could not talk with him for too long and he said that he would be losing his damage deposit and closed the door. He confirmed attending the unit on November 1st to hand in his keys and provide the Landlord with the Tenant's forwarding address.

In closing, the Tenant argued that the Landlord had to have seen him moving his stuff out all month, as he lived directly across the hall from him.

The Landlord argued that he could not proceed with re-renting or showing the rental unit without proper written notice from the Tenant to end the tenancy. He has since re-rented the unit about one and a half months after the Tenant moved out.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

The Landlords seeks to recover costs incurred to repaint the rental unit and argued that the Tenant had painted the unit with dark colors. The undisputed evidence was that the Tenant was granted permission to paint the unit. The Tenant disputes painting the unit dark colors and argued that he painted the unit with off-white or beige paint.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Landlord has the burden to prove the unit was painted with dark colors. The only evidence before me regarding the color of paint used was disputed verbal testimony which I find to be insufficient to meet the Landlord's burden of proof. Accordingly, I dismiss the Landlord's claim for painting, without leave to reapply.

Section 45 (1) of the Act stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case the Tenant was required to provide written notice to the Landlord no later than September 30, 2013, if he wished to end his tenancy October 31, 2013. The Tenant only provided verbal Notice on a date in October 2013, and remained in possession of the unit until sometime on November 1, 2013, when he returned the keys.

Based on the above, I find the Tenant did not provide proper notice to end this tenancy in accordance with section 45(1) of the Act, which caused the Landlord to suffer a loss of rent for November 2013. Accordingly, I award the Landlord lost rent in the amount of **\$881.00**.

The Landlord has been partially successful with their application; therefore I award partial recovery of the filing fee in the amount of **\$25.00**.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Loss of November 2013 Rent	\$881.00
Filing Fee	<u>25.00</u>
SUBTOTAL	\$906.00
LESS: Security Deposit \$425.00 + Interest 0.00	<u>-425.00</u>
Offset amount due to the Landlord	<u>\$ 481.00</u>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$481.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be 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 14, 2014

Residential Tenancy Branch

