



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MND, MNDC, FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for a monetary order for money owed or compensation for damage or loss, unpaid rent, and alleged damage to the rental unit, for authority to retain the tenant's security deposit, and for recovery of the filing fee.

The hearing process was explained to the attending parties and they were given an opportunity to ask questions about the hearing process.

Both parties confirmed receiving the other's documentary evidence and there were no issues concerning the service of the application.

Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond to the other's submissions, 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 tenant's security deposit, further monetary compensation, and to recover the filing fee?

Background and Evidence

This tenancy began on March 1, 2013, monthly rent was \$1250, and the tenant paid a security deposit of \$625 at the beginning of the tenancy.

The landlord stated that the tenant vacated the rental unit on October 22, 2013; the tenant disputed this date.

The undisputed evidence was that there is no move-in or move-out condition inspection report for the rental unit.

The landlord's monetary claim listed in his application was \$2116.42; however the landlord failed to provide a specific monetary breakdown or detailed calculation as required. Included with his claim was unpaid rent for October of \$1250, a rent deficiency of \$100 for September 2013, and \$200 to compensate his tenants in the lower rental suite.

At the hearing the landlord stated that his actual claim was \$2084.20, for the items mentioned and for cleaning and repair. Included somewhere in his documentary evidence, not submitted until February 14, 2014, the landlord explained the breakdown of his claim. The landlord submitted that he was entitled to \$195.25 for carpet clean and repair, \$135 for garbage hauling and cleaning, \$103.95 for a service call dealing with the hot water tank, along with the original claim as noted above.

The landlord's relevant documentary evidence included the written tenancy agreement, showing monthly rent of \$1250, copies of photos of the rental unit, receipts and cheques.

In support of his application, the landlord provided the following oral and written evidence:

- The landlord sought the end of the tenancy by serving the tenant a notice to end the tenancy.
- The landlord sought to offer the tenant an option allowing her not to pay rent for October if she vacated early in October, but that the communication with the tenant broke down prior to reaching an agreement. The landlord assumed that the tenant intended on staying in the rental unit until the end of October 2013.

- The landlord received a text message from the tenant stating that she would not pay the rent deficiency of \$100 for September as she wanted to leave as soon as possible. The landlord then issued the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, showing \$1350 in total unpaid rent.
- The tenant did not vacate the rental unit until October 20, 2013, causing the loss of revenue for that month.
- The parties met on October 22 for a final inspection, in which damage was found, along with the rental unit being unclean and strewn with garbage, causing a loss in cleaning, repairing the lower suite due to tenant conduct, and garbage removal.
- The tenant turned off the hot water heater for the rental unit in the lower suite, causing a service call and a loss of quiet enjoyment for the tenants residing in the lower suite.

The tenant provided the following oral and written evidence in response to the landlord's submissions and application:

- When the landlord originally served the tenant with a notice to end the tenancy, the landlord stated that he would allow the tenant to withhold rent to help the tenant out financially, if she vacated by the end of October.
- The landlord allowed a rent reduction of \$100 for yard maintenance during the summer months, and therefore she did not owe a rent deficiency for September 2013.
- The tenant denied damaging the ceiling to the lower suite, and questioned how that would be possible.
- The carpet was heavily soiled and foul smelling when she moved in and not shampooed to the point that the smell never disappeared. Additionally, the carpet was torn when she moved in and was therefore not her responsibility, as claimed by the landlord.
- Some items she left at the rental unit were for the local charity to pick up, and she went by the rental unit to pick up the rest of the garbage; however the

landlord said that he would remove the garbage himself. The tenant additionally submitted that there were piles of garbage at the beginning of the tenancy and were left from other tenants.

- The tenant strongly denied turning off the hot water tank, that she did not know how to do so, and that there were problems with the tank since the beginning of the tenancy, which the landlord never addressed.

The tenant's relevant documentary evidence included a written timeline of events, further written submissions, and photos of the rental unit.

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.

Unpaid rent-

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from a dispute resolution officer or expenditures incurred to make an "emergency repair", as defined by the Act. As the tenant has not submitted evidence under Sec. 33 of the Act that any alleged repairs were necessary for the health and safety reasons or that there were any emergency repairs which were urgent, she has not met this criteria.

Although the tenant alleged that the parties had a verbal agreement that she would be allowed a rent reduction of \$100 and that she would not owe rent for October if she vacated by the end of October, this alleged agreement was not in written form. I therefore could not rely whether or not the parties had such an agreement, as the same contradicts the written agreement and the landlord disputed such an agreement.

I therefore relied on the written agreement, and find that the tenant failed to pay rent in the full amount for September, with a deficiency of \$100, and failed to pay rent for October 2013.

I therefore find the landlord is entitled to a monetary award of \$1350, for a rent deficiency of \$100 for September and unpaid rent of \$1250 for October.

Damage, repair and cleaning, including garbage removal-

A key component in establishing a claim for damage is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Residential Tenancy Act deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me the landlord has failed to meet his obligation under of the Act of completing the inspections and there is also no independent record of the condition of the rental unit at the start and end of the tenancy.

In the absence of any other evidence, such as the condition inspection reports or photographs prior to the tenancy, I do not accept the landlord's claim for damages to the rental unit. The landlord has the burden of proof on the balance of probabilities and I find the landlord's evidence, or rather lack of compelling evidence, does not meet the burden of proof.

I also found it just as likely as not that the landlord offered garbage removal for the tenant and I therefore could not award the landlord costs for garbage removal.

I find the landlord submitted insufficient evidence that the tenant tampered with the hot water tank or caused damage to the ceiling in the lower rental suite.

I therefore dismiss the landlord's monetary claim for cleaning, repairing and garbage removal, without leave to reapply.

Due to the above, I find the landlord is entitled to a total monetary award of \$1400, comprised of unpaid rent of \$1350 and the filing fee of \$50, which I have awarded him for at least a partially successful application.

Conclusion

The landlord's application for monetary compensation is granted in part.

At the landlord's request, I direct him to retain the tenant's security deposit of \$625 in partial satisfaction of his monetary award of \$1400 and I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$775, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord 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 tenant is advised that costs of such enforcement are recoverable from the tenant.

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 respondent.

Dated: March 24, 2014

Residential Tenancy Branch

