



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing concerns the landlord's application for a monetary order as compensation for unpaid rent / 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 recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

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

Background and Evidence

There is no written tenancy agreement in evidence before me for this tenancy which began on March 15, 2012. Monthly rent of \$550.00 was due and payable in advance on the first day of each month, and a security deposit of \$275.00 was collected. A move-in condition inspection report was not completed.

In response to an application by the tenant for certain compensation and orders to be issued against the landlord, a previous hearing was held on November 15, 2013, with a Decision issued by date of November 18, 2013 (file # 813282). In summary, the Arbitrator dismissed the tenant's application without leave to reapply. Further, in the Decision the Arbitrator found that the tenant had removed all of her possessions from the unit by October 12, 2013, that the landlord was deemed to have received the unit keys from the tenant on October 21, 2013, and that rent had been paid to the end of October 2013. A subsequent application for review consideration by the tenant led to Review Consideration Decision dated January 20, 2014, pursuant to which the Decision of November 18, 2013 was upheld.

In the Decision of November 18, 2013, the Arbitrator ordered the tenant to "provide her current mailing address to the landlord in writing if she is seeking a return of her security

deposit.” Subsequently, the tenant informed the landlord of her forwarding address in writing, and the landlord’s application for dispute resolution (which includes an application to retain the security deposit) was filed on November 25, 2013. A move-out condition inspection report was not completed.

Through the person assisting the landlord, the landlord testified that new renters have not yet been found for the unit. The landlord also testified that advertising for new renters has been undertaken by way of notices physically posted in places such as a laundromat. It is also understood that some advertising may have been done on craigslist. While a particular date was unable to be identified, the landlord testified that advertising for new renters likely began sometime in early December 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

The parties are referred to the provisions set out Residential Tenancy Policy Guideline # 1 which speaks to “Landlord & Tenant – Responsibility for Residential Premises.”

The attention of the parties is also drawn to the following particular sections of the Act:

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

Further, the parties are informed of section 37 of the Act which addresses **Leaving the rental unit at the end of a tenancy**, and provides in part:

37(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Based on the documentary evidence and testimony, the various aspects of the landlord's claim and my findings around each are set out below.

\$550.00: *loss of rental income for November*

Section 45 of the Act speaks to **Tenant's notice**, and provides in part:

45(1) A tenant may end a periodic 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, and

(b) 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 relation to notice to end tenancy, in the Decision of November 18, 2013, the Arbitrator found in part as follows:

I find that the tenant did not comply with the provisions of section 45(1) of the Act and the requirement under section 52 of the Act that a notice to end tenancy must be in writing. The tenant continued to store her belongings in the rental unit for many days after October 1, 2013, and gave no written indication to the landlord that she was intending to end her tenancy. As noted at the hearing, both landlords and tenants are required under the Act to provide written notices to end a tenancy.

The landlord knew of the tenant's application for dispute resolution since October 11, 2013.....

The landlord's agent stated at one point that he and the landlord realized when the landlord received the tenant's dispute resolution hearing package that she had left the rental unit.

Section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement**:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

There is no dispute that the tenant failed to give proper notice to end the tenancy. However, in the absence of any evidence that the landlord undertook to mitigate the loss of rental income for November 2013 by advertising for new renters in a timely fashion after becoming aware on October 11, 2013 that the tenant had vacated the unit, the landlord's application for loss of rental income for November is hereby dismissed.

\$275.00: carpet repair – replacement of underlay, carpet cleaning, unit cleaning, driveway cleaning, changing unit locks

The amount claimed by the landlord reflects the full amount of the security deposit, however, related receipts submitted in evidence total \$183.10.

The tenant testified that all keys given to her at the start of tenancy were returned after she vacated the unit. The tenant also states that she neither cleaned the unit nor the carpet at the end of tenancy, as the unit and the carpet were not clean when tenancy began. Further, the tenant states that as the underlay was wet, she removed it from beneath the carpet and put it outside to dry.

In consideration of the documentary evidence and testimony, but in the absence of the comparative results of move-in and move-out condition inspection reports, I find that the landlord has established entitlement limited to **\$116.56**, as follows:

\$30.00: carpet cleaning (half the amount claimed)

\$20.00: repairing carpet (half the amount claimed)

\$6.56: replacement of underlay (half the amount claimed)

\$60.00: labour for unit cleaning calculated on the basis of \$15.00 / hour x 4 hours

Other costs claimed related to locks, switches, lights, smoke detector and a purchase at Rona hardware are hereby dismissed.

\$50.00: printing, photocopying, postage, car gas during preparation for hearing

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the application is hereby dismissed.

\$50.00: *filing fee*

As the landlord has achieved a measure of success with this application, I find that the landlord has established entitlement to recovery of the full filing fee.

Total entitlement: \$166.56

I order the landlord to withhold **\$166.56** from the tenant's security deposit of **\$275.00**, and I order the landlord to repay the balance of **\$108.44** (\$275.00 - \$166.56) to the tenant. Following from the foregoing, I also grant the tenant a **monetary order** for the balance of the security deposit owed of **\$108.44**.

Conclusion

The landlord is ordered to retain **\$166.56** from the tenant's security deposit.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant for the balance of the security deposit owed of **\$108.44**.

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 13, 2014

Residential Tenancy Branch

