



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNDC, RPP, FF

For the landlord: OPR, OPC, OPB, MND, MNR, MNSD, MNDC, FF

Introduction

This was the reconvened hearing dealing with the parties' respective applications for dispute resolution under the Residential Tenancy Act (the "Act").

The tenants applied for a monetary order for money owed or compensation for damage or loss, an order requiring the landlord to return the tenants' personal possessions, and for recovery of the filing fee.

The landlord applied for authority to retain the tenants' security deposit, a monetary order for unpaid rent, alleged damage to the rental unit and for money owed or compensation for damage or loss, an order of possession for the rental unit due to unpaid rent, for alleged cause and for alleged breach of an agreement with the landlord, and for recovery of the filing fee.

This hearing began on January 16, 2014, and was attended by tenant MH's mother, SH, and the landlord's legal counsel (hereafter "counsel"). At this hearing, counsel requested an adjournment for legal, procedural matters and SH agreed.

This hearing reconvened to deal with both applications and again was attended by SH and counsel only.

At the outset of the hearing, neither party raised any issue regarding service of the other's application or documentary evidence. SH confirmed accepting service of the landlord's application on behalf of her son, MH.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond each to the other's evidence, 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

1. Is the tenant entitled to monetary compensation and to recover the filing fee?
2. Is the landlord entitled to authority to retain the tenant's security deposit, further monetary compensation, and to recover the filing fee?

Background and Evidence

This tenancy began on September 1, 2013, monthly rent was \$1650, and the tenants paid a security deposit of \$825 at the beginning of the tenancy, as agreed by the undisputed evidence.

The landlord listed tenant MH as one of the tenants, along with two other individuals, CB and RP, as tenants.

Only MH was served with the landlord's application and Notice of Hearing letter, and the written tenancy agreement provided by the landlord does not list any tenant, but does contain MH's signature on an addendum to the tenancy agreement. The addendum was dated August 25, 2013, the same date the landlord signed the tenancy agreement.

SH stated that only MH and CB lived in the rental unit and she did not know of any others living there.

The tenancy has been concluded and therefore the landlord's request for an order of possession for the rental unit was no longer considered.

Tenant's application-

Although the tenant's original monetary claim was \$5000, for the value of personal property allegedly kept by the landlord, SH stated that the tenant's personal property has now been returned, with the exception of a queen size mattress and box springs.

SH stated that the tenant's new monetary claim is \$1000, for the replacement costs of the mattress and box springs.

Counsel responded by stating that the mattress and box springs were old and moldy, and were disposed of by the restoration company pursuant to an order of the local municipality.

Landlord's application-

The monetary claim listed in the landlord's application was \$14,149.94, comprised of unpaid rent of \$1650, cost of remediation by a restoration company of \$4009.45, and service charges levied by the municipality. In the landlord's documentary evidence, the claim had been reduced by \$1650, as the landlord currently claimed for municipal charges and restoration company charges.

In support of his application, the landlord submitted that although the tenancy agreement was not signed, the landlord leased the rental unit to three tenants, MH, CB, and CP, as previously referenced, for a tenancy beginning on September 1, 2013.

The landlord's legal counsel submitted that on or about November 1, 2013, the landlord was informed that the RCMP had arrested the tenants and were searching the property; on or about November 2, 2013, the landlord was informed by the RCMP that the property had been used to manufacture a controlled substance and that no person could occupy the rental unit until cleaning and remediation had been completed, according to counsel. As proof, the landlord submitted a copy of the notice by the municipality.

The landlord submitted that after receiving the notice, he attempted, but failed, to contact the tenants; following the failed attempt, the landlord removed the tenants' personal property to allow the restoration company to clean and remediate the property. The landlord submitted that he initially stored the personal property on his own property, but later asked the restoration company to move the property to a rental storage location. The landlord submitted that the mattress and box springs were not fit for use due to mold.

The landlord submitted that the tenants attended the rental unit on or about November 10, 2013, to retrieve their possessions, and threatened the landlord; following this alleged incident, the landlord instructed his legal counsel to release the key to the storage unit to the tenants and the key has not been returned.

The municipality, in a letter dated November 25, 2013, notified the landlord that due controlled substance manufacturing taking place on the property, he was being charged \$8490.49, for fire department and RCMP, staff and administrative charges as per the

local bylaws. The landlord was further informed that if he failed to pay this amount by December 31, 2013, the costs would be added to his property taxes in arrears. The landlord supplied a copy of the letter.

In response, the tenant's agent stated that no criminal charges had been laid on her son, MH, and therefore he has not been charged with any criminal activity.

SH also submitted that the locks were changed and the tenants were not allowed to remove their personal property. SH also submitted that the tenants were not allowed access to clean the premises as the landlord had denied access.

In response, counsel submitted that the landlord himself was not allowed access until the property had been professionally restored, due to the alleged criminal activity.

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, both parties 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.

Tenant's application-

As of the date of the hearing, the only remaining claim of the tenant was for a mattress and box springs.

I find the tenant submitted insufficient evidence of the value of the mattress and box springs, such as proof of the age and condition of the items, and was therefore unable to determine if the items had retained any value.

I also considered that the landlord stored all other personal property of the tenants, and I therefore questioned why the restoration company would dispose of just the mattress and box springs if the condition was other than as stated by the landlord, that the items were unfit to use due to mold.

I therefore decline to award the tenant any monetary compensation for the mattress and box springs, and I therefore dismiss their monetary claim, without leave to reapply.

Landlord's application-

Despite there being no listed tenant on the tenancy agreement or signature by a tenant, I accept the undisputed evidence that MH and CB entered into a tenancy with the landlord, beginning September 1, 2013, for a monthly rent of \$1650.

The landlord served only MH with his application and Notice of Hearing, as accepted by MH's mother, SH, as the landlord was unable to secure an address for CB.

While I am not certain if MH was the principal cause for the alleged damage suffered or costs incurred by the landlord, the two referenced tenants were co-tenants of the rental unit and are therefore jointly and severally liable for meeting the requirements of the tenancy agreement and obligations for the landlord's losses.

The law places the responsibility on the tenants to apportion among themselves the amount owing to the landlord. Furthermore, as co-tenants they are jointly and severally liable for debts and damages relating to the tenancy. This means the landlord may recover the full amount of money due from all, or any one of the tenants.

As to the landlord's monetary claim, I find the landlord submitted sufficient evidence that due to the actions of the tenants in the rental unit, he has incurred costs associated with the activities of at least one of the tenants. Those costs are for a professional restoration company, as was ordered of the landlord by the municipality, and the municipality's costs associated with the activities of the tenants in the rental unit.

Due to the above finding, I therefore find that landlord has proven that he is entitled to a monetary award of \$12,599.94, comprised of restoration costs of \$4009.45, municipal charges of \$8490.49, and the filing fee for his application of \$100.

Conclusion

For the reasons stated above, the tenant's application is dismissed, without leave to reapply.

At the landlord's request, I direct him to retain the tenant's security deposit of \$825 in partial satisfaction of his monetary award of \$12,599.94 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 \$11,774.94, 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*.

Dated: April 10, 2014

Residential Tenancy Branch

