



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNR, FF, MNSD

Introduction

There are applications filed by both parties. The landlord seeks a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss, for unpaid rent or utilities and recovery of the filing fee. The tenant seeks a monetary order for the return of double the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence by the other party, I am satisfied that both parties have been properly served.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?

Is the tenant entitled to a monetary order?

Background and Evidence

Both parties confirmed in their direct testimony that this tenancy began on approximately January 15, 1997 ending on November 15, 2013. The landlord has provided a copy of the signed tenancy agreement dated January 15, 1997 which states that monthly rent was \$875.00 and that a security deposit of \$437.50 was paid. Both parties confirmed that at the end of the tenancy the monthly rent was \$1,280.00 payable on the 1st of each month.

Both parties agreed that the tenant gave his notice to vacate the rental unit on October 14, 2013 via email. Both parties agreed that the tenant provided his forwarding address in writing to the landlord on November 15, 2013 on the day possession was returned to

the landlord. Both parties also agreed that on October 19, 2013 a mutual agreement to end the tenancy on November 15, 2013 was signed as shown by the submitted copy from the landlord.

The landlord seeks a monetary claim of \$1,059.69 which consists of \$640.00 for the loss of rental income for November 15-30 of 2013, \$37.59 for the cost to primer paint the bathroom, \$150.00 for ½ of the labour for painting the bathroom, \$25.00 for the landlord's time in dealing with the utilities company, \$24.69 for the cost of printing photographs for evidence, \$35.00 for the cost of two dump fee charges for disposing of stained carpet, \$75.00 for labour to dispose of the stained carpet on two trips to the dump and \$20.00 for an estimated use of utilities for 3 days.

The tenant disputes the landlord's claims. The landlord states that the tenant failed to provide proper notice in ending the tenancy and seeks the loss of the remaining ½ months rent of \$640.00 as the tenant vacated on November 15, 2013 when the rent is due on the 1st of each month. The tenant disputes this stating that the tenancy ended on November 15, 2013 as per the signed mutual agreement to end the tenancy. The tenant refers to section 44 of the act which states that, "a tenant is not liable to pay rent after a tenancy agreement has ended..." The landlord states that primer paint had to be added to the bathroom before painting as there were small spots of brown mold on some walls. The landlord has submitted a copy of a letter from the contractor who performed the work and described it in their letter costing the landlord, \$300.00 just for the bathroom. The tenant disputes this claim stating that for the last 5 years since the bathroom was repainted in 2008 that the landlord has conducted yearly inspections of the rental property without ever raising an issue for the bathroom spots. The tenant states that the landlord has commented on having a dehumidifier installed, but that no further action was ever done. The landlord confirmed this in their direct testimony. The landlord seeks a claim of \$25.00 for her time in dealing with the utility company because of difficulties arranging access for the billing. The tenant disputes this stating that they have also endured difficulties over the utilities because the landlord has failed in her responsibilities over the billing since they moved in 16 ½ years ago. The landlord seeks \$24.69 in costs for photo printing of evidence for the hearing. The tenant disputes this claim. The landlord seeks the recovery of \$35.00 in combined dump fee charges for disposing of a stained carpet and \$75.00 for her time for approximately 1 ½ hours at \$25.00 an hour. The landlord states that leftover recycling and a garbage can left by the tenant were also removed to the dump incurring these dump fees. The tenant disputes this claim stating that they were told by the landlord that the carpet was going to be removed and disposed of as well to refinish the hardwood floors. The tenant also states that he did leave some recycling as well as an empty garbage can, but nothing that could be considered excessive and could not be dealt with by the municipal recycling

program. The landlord stated that the tenant was responsible for removing his garbage and recycling and to take it with him when he left the property.

The tenant also seeks a monetary claim of \$621.50. This consists of double the \$437.50 security deposit less the returned \$153.50, totalling, \$721.50. The tenant states that the landlord has failed to return the complete security deposit within the 15 days as allowed by the Residential Tenancy Act. The tenant states that the landlord paid the owed interest on the original security deposit and returned \$153.50 to the tenant. The tenant states that he agreed to the landlord withholding \$100.00 for carpet cleaning from the security deposit and did not consent to any other deductions. The tenant seeks the return of the \$184.00 balance and \$437.50 as compensation under the Act, totalling, \$621.50.

Analysis

Both parties agreed that a mutual agreement was signed on October 19, 2013 after the landlord received the notice to vacate from the tenant on October 14, 2013. As the landlord accepted that the tenancy was ending on November 15, 2013 by mutual agreement the landlord waived her right to seek compensation for the tenant failing to provide proper notice to end the tenancy. As such, section 44 of the Residential Tenancy Act applies and the landlord is not entitled to compensation for the \$640.00 claim of loss of rent as the tenancy was ended on November 15, 2013 by mutual agreement.

On the claim of \$187.59 for the combined claim of paint and labour to paint the bathroom, I find that the landlord has failed to provide sufficient evidence to satisfy me as to the tenants neglect in maintaining the condition of the bathroom. However, as both parties were in agreement that there was a prior incident of "brown spots" or humidity issues in 2007-2008 as shown by the invoice dated January 28, 2008 for which both parties agreed that the bathroom was treated by "sand and paint washroom (2 coats)" for this same issue, I find that the both parties are partially at fault for failing to mitigate any possible reoccurrences. On this basis, I find that the landlord did suffer damage, but has not established a claim for the full claimed amount. The landlord is granted a nominal award of \$100.00.

On the claim of \$25.00 for the landlord's time in communicating with the landlord over difficulties with the utility billing, I find that the landlord has failed. For over 16 years the landlord has abdicated the responsibility of paying the utilities to the tenant. The landlord failed to follow up in changing the utilities over to the tenants as well as failing to establish a practice of dealing with utilities that could have been spelled out in a

signed tenancy agreement. I find that the landlord has failed to provide sufficient evidence to satisfy me that a loss occurred or that this loss was a result of the direct actions of the tenant.

On the landlord's claim for \$24.69 for recovery of photo print costs for evidence, Section 72 of the Act addresses **Director's orders: fees and monetary order**. 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, the Landlord's claim for recovery of litigation costs(photo printing) are dismissed.

The landlord's claim for recovery of \$35.00 in dump fees and \$75.00 for labour has not been established. The landlord has failed to provide sufficient evidence to satisfy me that these claims in cost were as a result of the negligence of the tenant. The stained carpet was being removed to refinish the hardwood floors and would have been disposed of by the landlord. As well, the landlord could have mitigated any possible costs with the recycling by having it picked up by the municipal recycling program as opposed to taking it to the dump. These portions of the landlord's claim are dismissed.

Both parties have agreed that the claim for \$20.00 for the cost of 3 days of utilities should be settled for \$10.20. Both parties agreed that it was fair based upon the landlord's utilities invoice from FortisBC. As such the landlord has established a claim for \$10.20.

The landlord has established a total monetary claim of \$110.20.

As for the tenant's claim, Section 38 of the Residential Tenancy Act states,

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) 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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

The tenancy ended on November 15, 2013, the landlord filed for dispute resolution on March 7, 2014 to retain the security deposit of \$437.50, even though the tenant had provided his forwarding address in writing on November 15, 2013. It is clear that the landlord failed to return the complete security deposit within the allowed 15 days from the end of the tenancy or when the tenancy ended on November 15, 2013. The landlord did not file an application for dispute resolution to dispute the return of the security deposit. The tenant has established a claim for the return of the remaining balance of \$184.00 for the security deposit and compensation under section 38 (6) of \$437.50. The tenant has established a total monetary claim of \$621.50.

Both parties are entitled to recovery of the \$50.00 filing fee. In offsetting these claims, I find that the tenant is granted a monetary order for \$511.30. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order for \$511.30.

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 08, 2014

Residential Tenancy Branch

