



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord's application (filed October 7, 2013): MND; MNDC; MNSD; MNR; FF

Tenant's application (filed October 21, 2013): MNDC; MNSD; FF; O

Introduction

This Hearing was convened to consider cross applications. The Landlord filed an Application for Dispute Resolution seeking a monetary award for unpaid rent and damages to the rental unit; for compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit against the his monetary award; and to recover the cost of the filing fee from the Tenant.

The Tenant filed an Application for Dispute Resolution seeking return of the security deposit; for compensation for damage or loss under the Act, regulation or tenancy agreement; to recover the cost of the filing fee from the Landlord; and for "other" orders.

The parties and the Tenant's witnesses gave affirmed testimony at the Hearing.

It was determined that the Landlord served the Tenant with his Notice of Hearing documents on October 7, 2013, and provided the Tenant with copies of his documentary evidence on December 18, 2013. The Tenant also served the Landlord with copies of her documentary evidence, which the Landlord acknowledged receiving on October 21, 2013 and December 1, 2013.

These cross-applications were originally scheduled to be heard on January 2, 2014. The Landlord provided oral testimony on January 2, 2014; however, the time allotted for the Hearing ran out before the Tenant could provide her submissions. Therefore, the matter was adjourned to February 19, 2014.

On February 19, 2014, both parties signed into the reconvened Hearing. The Landlord stated that his legal advocate was in hospital and requested an adjournment. The Tenant consented to the adjournment and the matter was adjourned to April 30, 2014.

Preliminary Matters

The Landlord's Application was amended to reflect the Tenant's complete name and the correct spelling of her last name.

The Tenant provided a new address for service of documents or notices.

The Tenant's Application for Dispute Resolution indicates that she is seeking "other" relief; however, she did not provide sufficient details in her Application with respect to what other relief she is seeking. When a party seeks "other" relief, the Application for Dispute Resolution requires the Applicant to provide details in the "Details of Dispute Resolution" section. No details were provided. Therefore this portion of the Tenant's application is dismissed.

Issues to be Decided

1. Is the Landlord entitled to a monetary award for unpaid utilities; damages; and loss of revenue, management fees and advertising costs due to the Tenant's breach of the tenancy agreement?
2. Is the Tenant entitled to a monetary award for the cost of repairs; moving expenses; and compensation for pain and suffering?
3. Is the Tenant entitled to return of the security deposit?

Background and Evidence

A copy of the tenancy agreement signed August 7, 2013, was provided in evidence. This was a lease, commencing September 1, 2013 and ending March 31, 2014. The Tenant moved out of the rental unit on or about September 28, 2013. The rental unit was re-rented effective January 15, 2014.

Monthly rent was \$1,800.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$900.00 which the Landlord is holding.

Landlord's relevant testimony and submissions:

The Landlord stated that the Tenant wished to move into the rental unit early, at 4:30 p.m. on August 31, 2013. The Landlord testified that he and the Tenant did a "walk through" at the beginning of the tenancy, which took half an hour to one hour to complete. He stated that the rental unit was nice and clean. The Landlord said that the carpets were not professionally cleaned, but that the Tenant said she would clean them herself because she wanted to get in early.

The Landlord stated that the rental unit is a 1970s house with aluminum windows, situated close to the water. He submitted that because of its proximity to the water, and the fact that the windows are older style aluminum windows, mildew will form beside the windows if the Tenant does not regularly clean it. The Landlord testified that he offered the Tenant a reduction in rent of \$100.00 per month, but she declined.

The Landlord stated that on September 14, 2013, the Tenant gave him written notice to end the tenancy.

He stated that the Tenant did not keep the windows clean and free from condensation. The Landlord testified that the Tenant also disabled a fan, which was there for air circulation, because the Tenant said it used too much electricity.

The Landlord testified that the Tenant complained about mould in the rental unit, so the Landlord hired a professional mould inspector to do an examination on September 9, 2013. The Landlord provided a copy of the report, dated September 13, 2013. The Landlord stated that there was no mould in the rental unit when the Tenant moved out, and that the black substance inside the sliding door tracks was dirt.

The Landlord stated that the Tenant removed wall paper in the rental unit without his permission and painted the walls with latex paint without using a primer. He stated that the Tenant's son kicked in the basement door, breaking the lock. The Landlord stated that the basement was not part of the rental unit. The Landlord stated that the Tenant also left junk behind at the rental unit when she moved out. He stated that the Tenant and her boyfriend smoked in the house, contrary to the terms of the lease.

The Landlord seeks a monetary award, calculated as follows:

Loss of revenue for October, November and December, 2013	\$5,400.00
Cost to replace basement door and lock	\$200.00
Property Manager's fees	\$500.00
Unpaid utilities (Tenant's share of water bill)	\$23.45
Labour to remove paint in master bathroom (1 ½ days)	\$180.00
Labour (yard maintenance)	<u>\$100.00</u>
TOTAL CLAIM	\$6,403.45

The Landlord provided photocopies of photographs of the rental unit and three copies of an on-line ad in evidence. He stated that there was no condition inspection report completed at the end of the tenancy.

Tenant's relevant testimony and submissions:

The Tenant stated that she disputes all of the Landlord's testimony. She stated that she got rid of her animals in order to move into the rental unit and that she was looking forward to living there for a long time. The Tenant testified that she even offered to paint and replace the carpet at her own expense.

The Tenant testified that the house was mouldy when she moved in and that she could smell it. The Tenant testified that she complained to the Landlord and he offered a reduction in rent, but it was only \$50.00 per month and not \$100.00 as stated by the Landlord.

The Tenant testified that the Landlord assured her that there were working smoke detectors on each floor in the rental unit, but that was not the case. She stated that the rental unit was filthy when she moved in, the patio door did not lock, and the balcony railing was not secure. The Tenant testified that there was a 30 foot drop from the balcony and that she was very concerned about the safety of her little girl.

The Tenant stated that the Landlord did not want to complete a Condition Inspection Report at the beginning of the tenancy, so she completed one herself on August 31, 2013. She said the Landlord told her he would come to the rental unit to address her concerns but that he kept missing appointments. The Tenant stated that on September 4, 2013, she gave the Landlord a letter advising that he was in breach of the Act because there were no working smoke detectors on each floor, no lock on the patio door, and the balcony railing was not secure. She stated that the Landlord signed her warning letter.

The Tenant stated that the Landlord did not correct the breaches, and so on September 14, 2013, she gave notice that she would be moving out by September 30, 2013.

The Tenant seeks a monetary award, calculated as follows:

Labour to clean rental unit, caulk tub and paint	\$160.50
Cost of paint and primer	\$103.44
Hydro cost for heater/fan @28 days (\$2.00 per day)	\$56.00
Alternate accommodation (3 days)	\$213.57
Moving costs	\$243.67
Return of security deposit	\$900.00
Emotional stress	<u>\$2,000.00</u>
TOTAL CLAIM	\$4,777.18

The Tenant provided photographs of the rental unit; a copy of her letters to the Landlord dated September 2 and September 6, 2013; a copy of the move-in Condition Inspection Report; a copy of her notice to end the tenancy dated September 14, 2013; and various invoices.

The Landlord gave the following reply:

The Landlord testified that the mould report indicates that there was not a great deal of mould. He stated that he fixed the balcony railing in a timely manner.

The Landlord stated that he did not believe that the Tenant moved out because of any breaches on his part. He stated that a previous tenant had talked to the Tenant and told her that the hydro bill is too high. The Landlord believes that this is the real reason the Tenant ended the tenancy early.

Analysis

This Hearing lasted a total of 2 hours and 15 minutes over the three dates. Both parties provided a lot of testimony, some of which was not relevant to the issues identified in their applications. In this Decision, I have recorded only the relevant testimony provided by the parties.

In a claim for compensation for damage or loss under the Act, regulation or tenancy agreement, the applicant has the burden of proof to establish their claim on the civil standard, the balance of probabilities.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 7(2) of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

To prove a loss and have the respondent pay for the loss requires the applicant to prove four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement,

3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Landlord's claim for loss of revenue and Property Manager's fees

The Landlord seeks loss of revenue because the Tenant ended the tenancy before the end of the term. He also seeks to recover the cost of his Property Manager's fees in advertising and re-renting the rental unit.

There is no argument that the Tenant ended the term tenancy early. However, Section 45(3) of the Act provides:

Tenant's notice

- 45** (3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

The Tenant relies on Section 45(3) of the Act. She submits that the Landlord did not make emergency repairs to the rental unit in a timely fashion after being given written notice to do so. These repairs included: placing a lock that gave access to the rental unit; repairing the balcony railing; installing smoke detectors on each floor of the rental unit; and remediating the rental unit against mould. Section 33(1) of the Act provides:

Emergency repairs

- 33** (1) In this section, "**emergency repairs**" means repairs that are
- (a) urgent,
 - (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
 - (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,

- (v) the electrical systems, or
- (vi) in prescribed circumstances, a rental unit or residential property.

I accept the Landlord's testimony that the balcony railing was re-attached in a timely fashion. However, the Landlord did not install smoke detectors on each floor of the rental unit and did not replace or repair the lock after being given written notice on or about September 4, 2013. In addition, although the Landlord hired a professional to inspect the rental unit for mould, I find that he did not act to rid the rental unit of mould in a timely fashion once it was confirmed. In fact, the Landlord testified that he felt the mould was no cause for concern. The report indicates that *cladosporium* species mould was found in the test sample and was graded at 4+. The report indicates that quantities of moulds are graded 1+ to 4+, with 4+ denoting the highest numbers.

I find that the repairs that the Tenant sought were emergency repairs and that the Landlord breached a material term of the tenancy agreement by not making repairs in a timely fashion. I find that the Tenant ended the tenancy legally in accordance with the provisions of Section 45(3) of the Act and that the Landlord is not entitled to a monetary award for loss of revenue or the costs associated with re-renting the rental unit. In any event, I find that the Landlord did not provide sufficient evidence of steps taken to re-rent the rental unit in a timely fashion and therefore did not meet part 4 of the test for damages.

This portion of the Landlord's claim is dismissed without leave to re-apply.

Landlord's claim for damages to the rental unit and unpaid utilities:

Section 21 of the regulations provide that a Condition Inspection Report, completed in accordance with Part 3 of the regulations, is evidence of the state of repair and cleanliness of the rental unit on the date that it is completed, unless either party has a preponderance of evidence to the contrary. The onus is on the Landlord to arrange for a condition inspection to take place at the beginning and at the end of a tenancy. In this case, the Landlord did not comply with Section 23 or 34 of the Act. Therefore, I find that the Landlord has not met the first part of the test with respect to his claim for damages to the rental unit caused by the Tenant. The Tenant denies that she damaged the door and I find that the Landlord provided insufficient evidence to prove that she did.

I find that the Landlord did not provide sufficient evidence to prove his claim for unpaid utilities. He submitted that the Tenant's share of the water bill was \$23.45, and that it was unpaid; however, the Landlord did not provide a copy of the water utility bill in evidence. Therefore, I find that he did not meet part 3 of the test for damages.

This portion of the Landlord's claim is dismissed without leave to re-apply.

Landlord's claim for his labour costs:

The Landlord has claimed for yard maintenance and the cost of removing paint. The Tenant lived in the rental unit for less than one month and I find that the Landlord provided insufficient evidence that the Tenant left the yard in poor condition at the end of the tenancy. Therefore, I deny the Landlord's claim in the amount of \$100.00 for yard maintenance.

The Tenant did not deny that she painted walls in the rental unit without the Landlord's express permission. I find that this portion of the Landlord's claim is reasonable and therefore, I grant the Landlord a monetary award in the amount of **\$180.00**.

Tenant's claim for compensation for emotional stress:

I find that the Tenant provided insufficient evidence to warrant a claim in the amount of \$2,000.00. The Tenant did not provide medical evidence to indicate that she was under an inordinate amount of stress. This portion of her claim is dismissed without leave to re-apply.

Tenant's claim for the cost of alternate accommodation:

Based on the photographs and the expert's report provided, I accept that the rental unit had mould. However, the Tenant did not provide evidence that the mould was affecting her health, or the health of other occupants in the rental unit. There was insufficient evidence that the Tenant and her family had to seek alternate accommodation for three days in September, 2013. This portion of her claim is also dismissed without leave to re-apply.

Tenant's claim for the cost of paint and hydro:

The Tenant provided insufficient evidence that the Landlord provided permission to repaint, or that the rental unit required paint at the beginning of the tenancy. The Tenant provided no copies of invoices for paint and supplies.

I find that the Tenant provided insufficient details with respect to her claim for hydro costs. She did not provide copies of hydro bills, or an explanation as to why she felt that the Landlord should pay for part of her hydro costs.

Therefore, I find that the Tenant did not meet parts 1, 2 and 3 of the test for damages and this portion of her claim is dismissed without leave to re-apply.

Tenant's claim for her labour to clean the rental unit:

Based on the evidence provided by both parties, I find that the rental unit was dirty at the beginning of the tenancy. I find that the Tenant's claim for her labour costs is a reasonable one, and I award her the amount of **\$160.50** for this portion of her claim.

Tenant's claim for moving costs:

I have found that the Tenant ended the tenancy legally because of the Landlord's breach of the Act. I also find that the Tenant incurred moving costs as result of the Landlord's breach. The Tenant provided a copy of the receipt for the truck rental and moving costs in the amount of **\$243.67** and this portion of her claim is granted.

Filing fees, security deposit and set-off:

Both parties have been largely unsuccessful in their monetary claims and I order that each party bear the cost of their own filing fee.

I find that the Landlord extinguished his right to claim against the security deposit pursuant to the provisions of Section 38(5) of the Act. Therefore, I order that the Landlord return the **\$900.00** security deposit to the Tenant.

I hereby set-off the parties' monetary awards against each other and provide the Tenant with a Monetary Order, calculated as follows:

Tenant's total award	\$403.17
Return of the security deposit	<u>\$900.00</u>
Subtotal	\$1,303.17
Less Landlord's total award	<u>-\$180.00</u>
TOTAL	\$1,123.17

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$1,123.17** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and be 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: May 28, 2014

Residential Tenancy Branch

