



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MND, MNSD, SS, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent or utilities; for a monetary Order for damage; to keep all or part of the security deposit; to serve documents or evidence in a different manner; and to recover the fee for filing this Application for Dispute Resolution. At the outset of the hearing the Landlord withdrew the application to serve documents or evidence in a different manner.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord stated that on January 28, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents/photographs the Landlord wishes to rely upon as evidence were personally served to the Tenant. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings. The Tenant submitted no evidence.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent/loss of revenue, to compensation for cleaning the rental unit, for compensation for utilities, and to retain all or part of the security deposit paid by the Tenant?

Background and Evidence

The Landlord and the Tenant agree that they entered into a fixed term tenancy agreement, the fixed term of which began on January 01, 2013 and ended on December 31, 2013. The parties agree that the tenancy agreement required the Tenant to pay rent of \$1,250.00 by the first day of each month and that the Tenant paid a security deposit of \$625.00.

The Landlord and the Tenant agree that on October 29, 2013 the Tenant informed that the Tenant had vacated the rental unit and that no prior written notice had been provided. The parties agree that the Tenant has never provided the Landlord with a forwarding address, in writing.

The Landlord is seeking compensation of \$1,875.00 for lost revenue for the period between November 01, 2013 and December 01, 2013. The Landlord stated that on November 01, 2013 she moved into this rental unit from a different unit in the residential complex and she advertised her former unit for rent. She stated that she advertised her former unit on two popular websites and on November 15, 2013 found a new tenant for December 15, 2013.

The Tenant stated that when they discussed this tenancy he informed the Landlord that he was thinking of getting a dog and she told him that would be acceptable. The Landlord stated that when they discussed a dog she told him she would consider a dog, providing it was a medium sized, mature dog. The Tenant agreed that they discussed the size of the dog. He stated that although he told the Landlord he was not sure if he wanted a puppy, she did not tell him a puppy would not be permitted.

The Landlord submitted a copy of the tenancy agreement, which stipulates that pets will be permitted "upon approval".

The Landlord and the Tenant agree that after this tenancy began the Tenant informed the Landlord that he wished to get a puppy and that, after some discussion, the Landlord told him that she did not want a puppy in the rental unit. The Tenant stated that he did not request permission for another dog after this incident but he ended the tenancy because he believed the Landlord would not allow him to have a dog in the unit and he wanted a dog. He contends the tenancy was "frustrated".

The Landlord and the Tenant agree that the Tenant was required to pay for propane used during the tenancy. The Landlord is seeking compensation for propane costs, in the amount of \$224.25. The Tenant agrees to pay this amount for propane.

The Landlord is seeking compensation, in the amount of \$250.00, to repair walls in the rental unit. The Landlord stated that there were several gouges and large nail holes in the walls. The Tenant stated that there were some minor scuffs and small nail holes in the walls. The Landlord and the Tenant agree that the Tenant has already paid the Landlord \$50.00 in compensation for damage to the walls.

The Landlord submitted two photographs that demonstrate the damage to the wall. She stated that she and a friend spent approximately 1.5 hours repairing and repainting the damaged areas.

The Landlord is seeking compensation, in the amount of \$100.00, for cleaning the rental unit. She stated that significant cleaning was required in the rental unit at the end of the tenancy and that she spent four hours cleaning the unit. The Tenant stated that the rental unit was cleaned at the end of the tenancy. The Landlord submitted photographs of the rental unit that show dirty window sills and blinds; drawers that need wiping; a sink that needs wiping; and several items left in a drawer.

The Landlord is seeking compensation, in the amount of \$50.00, for removing some outdoor furniture the Tenant left at the rental unit. The Tenant agrees that he left this furniture. The Landlord stated that she does not know how long it took her partner to dispose of this furniture.

The Landlord is seeking compensation, in the amount of \$157.50, for cleaning the carpet in the rental unit, which she contends required cleaning. The Tenant stated that the carpet did not require cleaning. The Landlord submitted a photograph of the carpet on the stairs, which does not clearly demonstrate that cleaning was required.

Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,250.00 by the first day of each month and that the tenancy was for a fixed term that was to end on December 31, 2013.

I find that the Tenant did not comply with section 45(2) of the *Residential Tenancy Act* (Act) when he ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. I therefore find that the Tenant must compensate the Landlord for any losses the Landlord experienced as a result of the Tenant's non-compliance with the Act, pursuant to section 67 of the Act.

In these circumstances, I find that the Tenant must pay \$1,250.00 to the Landlord for the loss of revenue that the Landlord experienced in November of 2013 and \$625.00 for the loss of revenue the Landlord experienced for the period between December 01, 2013 and December 14, 2013.

In determining this matter, I find that the Landlord made reasonable efforts to mitigate her losses. Although she opted to move into the rental unit, she advertised the unit in the residential complex she had previously occupied in a reasonable and timely manner.

I do not accept the Tenant's argument that the tenancy was frustrated. A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and

consequences of the contract so far as either or both of the parties are concerned. That is simply not the case in this tenancy.

I find that the term in the tenancy agreement about a pet is clear: the Tenant would be permitted to have a dog with the consent of the Landlord. The undisputed evidence is that the Landlord did not approve the Tenant's request to keep a puppy in the rental unit and that she informed him that she would approve a mature, medium sized dog. I find that decision reasonable and to be compliant with the terms of the tenancy agreement.

As the Tenant agreed that the Landlord is entitled to compensation, in the amount of \$224.25 for propane, I find that the Landlord is entitled to compensation in this amount.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the photographs submitted in evidence, I find that there was one gouge on the wall that exceeded normal wear and tear. I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to repair this gouge at the end of the tenancy. On the basis of the undisputed evidence, I find that the Tenant has already given the Landlord \$50.00 to repair damage to the walls. I find that this is reasonable compensation for the damage shown in the photographs and that no further compensation is warranted for this damage.

I find that the Landlord has submitted insufficient evidence to show that, with the exception of the aforementioned gouge, the walls were damaged beyond what is considered "normal wear and tear". In reaching this conclusion I was influenced by the absence of evidence that corroborates the Landlord's claim that the walls were damaged beyond "normal wear and tear" (with the exception of the one gouge) or that refutes the Tenant's testimony that the damage was minor. I therefore dismiss the Landlord's claim for compensation for damage to the walls.

On the basis of the photographs submitted in evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to leave the rental unit in reasonably clean condition. I therefore find that the Landlord is entitled to compensation for the four hours she spent cleaning the rental unit, at an hourly rate of \$25.00, which equates to \$100.00.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when he left furniture at the rental unit. I therefore find that the Landlord is entitled to compensation for time spent disposing of the furniture. As the Landlord does not know how long it took to dispose of the furniture, I find that compensation of one hour is reasonable, at an hourly rate of \$25.00.

I find that the Landlord has submitted insufficient evidence to corroborate her claim that the carpet needed cleaning or that refutes the Tenant's claim that the carpet did not require cleaning. I therefore dismiss the claim for carpet cleaning. In reaching this conclusion I note that the photograph of the carpet did not, in my view, clearly show that cleaning was required.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$2,274.25, which is comprised of \$1,875.00 in lost revenue, \$224.25 for propane, \$125.00 for cleaning/disposing of furniture, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the security deposit of \$625.00, in partial satisfaction of this claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,649.25. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and 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 22, 2014

Residential Tenancy Branch

