



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MND

Preliminary Issues

At the outset of this proceeding the Landlord confirmed that she regained possession of the unit after the Tenant vacated on May 3, 2014. Therefore, she no longer required an Order of Possession.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on April 23, 2014 by the Landlord to obtain a Monetary Order for unpaid rent or utilities, and damage to the unit, site or property.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlords and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to a Monetary Order?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a month to month tenancy that commenced on December 15, 2013. The Tenant was required to pay rent of \$1,150.00 on the first of each month and the Tenant paid a total of \$575.00 as the security deposit. No condition inspection reports were completed at move in or at move out.

The Landlord testified that she personally served the Tenant a 1 Month Notice for repeated late payment of rent on March 31, 2014. She said the Tenant's move was delayed so they mutually agreed that the Tenant could stay in the rental unit until May 3, 2014. Despite their agreement the Landlord said the Tenant did not pay the outstanding rent of \$2,140.00, which is comprised of \$875.00 owed for February, \$1,150.00 for April, and the three days of May 2014 of \$115.00.

The Landlord pointed to the photos provided in her evidence as proof that the rental unit was not properly cleaned and that it was left damaged and with a television that had to be disposed of. The Landlord stated that she is seeking \$250.00 for the repairs plus \$150.00 for the cleaning and cost to dispose of the television.

The Tenant testified and confirmed she owed the Landlord money for February and April rent. She stated that she had asked the Landlord to deduct the three days in May off of her security deposit but the Landlord refused. She stated that she did not agree to pay the Landlord separately for the three days in May and the Landlord did not say she was charging her for those days.

The Tenant argued that the Landlord did not complete a walkthrough of the unit at the beginning or end of her tenancy. She disputed the claims that the unit was damaged during her tenancy and argued that all the items were damaged prior to her moving into the unit. With respect to the cleaning the Tenant admitted that she had forgotten to clean the fireplace and that she left a television inside the unit.

In closing, the Landlord confirmed that she did not issue notices for an inspection but argued that the photos are proof that the unit was left dirty and incurred damage during the tenancy.

Analysis

Section 26 of the Act stipulates that a tenant must pay rent when it is due in accordance with the tenancy agreement.

The undisputed evidence was that this tenancy ended, in accordance with the 1 Month Notice, effective April 30, 2014, and the Tenant over held the rental unit by three days until May 3, 2014. The Tenant owed the Landlord prior unpaid rent of \$2,025.00 up to April 30, 2014, and requested that the Landlord retain payment for the three additional days in May from her security deposit.

Based on the foregoing, I find the Landlord is entitled to the past due rent of \$2,025.00 plus the three days overholding charges of \$115.00 for a total award of **\$2,140.00**.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Based on the aforementioned, the disputed verbal testimony, and in the absence of a move in condition inspection report form, I find the Landlord provided insufficient evidence that the rental unit was damaged during this tenancy. Accordingly, the claim for damages is hereby dismissed, without leave to reapply.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The undisputed testimony was that the Tenant forgot to clean the fireplace and left a television behind that needed to be disposed of. In the absence of receipts to prove the actual loss, I find the Landlord's claim for cleaning and disposal of the television to be inflated. Accordingly, I award the Landlord compensation in the amount **\$75.00** which is comprised of two hours of cleaning @ \$25.00 per hour plus \$25.00 to dispose of the television.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid rent plus over holding charges to May 3, 2014	\$2,140.00
Cleaning and disposal of the television	<u>75.00</u>
SUBTOTAL	\$2,215.00
LESS: Security Deposit \$575.00+ Interest 0.00	<u>-575.00</u>
Offset amount due to the Landlord	<u>\$1,640.00</u>

Conclusion

The Landlord has been awarded a Monetary Order for **\$1,640.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be 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: June 18, 2014

Residential Tenancy Branch

