



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0695910 B.C. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for unpaid rent and utilities, cleaning and garbage removal, and key cutting; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Have the landlords established an entitlement to receive compensation from the tenant for the amounts requested?
2. Are the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced November 1, 2013 for a fixed term set to expire July 31, 2014. The tenant paid a security deposit of \$400.00 and was required to pay rent of \$800.00 starting December 1, 2013. The tenancy agreement provides that the monthly rent did not include electricity or heat. The tenant's rent cheque for April 2014 was returned for insufficient funds. The landlords found the rental unit abandoned on April 12, 2014. The tenant stated that she moved out on April 4, 2014.

Below, I have summarized the landlord's claims against the tenant and the tenant's position.

Unpaid Rent

The landlord is seeking to recover unpaid rent of \$800.00 for the month of August 2014 due to the tenant's failure to pay. The landlord submitted that the unit was re-rented starting May 2014.

The tenant was of the position that she should not have to pay rent for April 2014 because the rental unit had mould and on April 3, 2014 her doctor ordered her to move. The tenant proceeded to vacate the rental unit and did not inform the landlord that she had moved out or the reason for moving. Rather, by way of an email concerning her returned rent cheque, she told the landlord that the rent would be paid the following week when her tax refund came.

The landlord agent's acknowledged that the tenant had complained of mould in December 2013 and in response they sent a mould specialist to inspect the unit and remove any signs of mould. The specialists removed mould from the window tracks and provided the tenant with suggestions to reduce condensation in the unit. The landlord also purchased a dehumidifier for the tenant to use. The landlord's agents submitted that the last they heard from the tenant about mould was that she stated the dehumidifier was working fine. The landlord's agents stated they had no inclination the tenant was experiencing problems with mould and they did not find any signs of mould in the unit when they regained possession. Nor, have any previous tenants or subsequent tenants experienced issues with mould in the unit and as such, the landlord attributes any issues with mould to be associated to lifestyle of the tenant.

The tenant acknowledged that the mould specialist had removed mould from the window sills and gave her suggestions to reduce condensation including opening windows and running the bathroom fan. The tenant acknowledged that the only communication she had with the landlord after the mould specialist attended the unit was regarding the effectiveness of dehumidifier.

Unpaid utilities

The landlord requested recovery of \$1,266.20 for electricity consumed at the rental unit for the period of November 1, 2013 to April 30, 2014. The landlord's agents explained that the tenant was to get a Fortis account in her own name but when she unable to the landlords left the account in the landlord's name and then requested payments from the tenant. The tenant did not make any payments toward the electricity bills.

The tenant acknowledged that she did not obtain a Fortis account in her name because he had an outstanding bill from the past and did not have \$1,000.00 to pay it. Nor, would Income Assistance give her the money so that she could open her own account. As such, the landlord volunteered to have the Fortis account in its name.

The tenant did not agree with paying for electricity for two reasons:

1. The electricity account was not in her name and the landlord voluntarily had the account in its name.

2. The electricity bills are excessive due to having to run the dehumidifier and leave the windows open to avoid mould formation.

The tenant offered to pay the landlord one-half of the amounts requested by the landlord for electricity. The landlord counter-offered with \$1,200.00 to which the tenant rejected.

Cleaning and junk removal

The landlord is seeking recovery of \$325.00 paid to a woman to remove garbage from the property and clean the rental unit. The landlord's agents described the rental unit as being left in a filthy condition. The email written by the house cleaner describes the rental unit as being filthy with a large amount of garbage left behind.

The tenant was of the position she should not have to pay for removal of a couch and TV stand that were in a shed on the property and not hers. The tenant submitted that she left a full garbage can and five full recycling bins at the property but that only required someone to take them to the curb for pick-up. Further, the tenant submitted that she vacuumed, cleaned the bathroom, wiped the walls, and cleaned the cupboards.

The landlord's agents confirmed that the subject invoice does not include removal of the couch and TV stand.

Carpet cleaning

The landlords are seeking recovery of \$136.45 for carpet cleaning as the carpets were dirty and the tenant had a pet in the unit.

The tenant denied that the carpets were left dirty but acknowledged that she had a cat in the unit.

Key cutting

The landlords submit that they spent \$6.70 to cut more keys as new tenants were moving in for the 1st of May 2014 and the tenant did not return the keys until mid-May 2014.

The tenant claimed that she left the keys in the landlord's mailbox on April 4, 2014.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

Unpaid Rent

Where a tenant is in a fixed term tenancy, the tenant may end the tenancy earlier than the expiry date where the landlord has breached a material term and the tenant gives the landlord written notice of the breach and a reasonable amount of time to correct the breach. If the landlord does not correct the breach then the tenant may end the tenancy early.

In this case, the tenant asserted that the landlords failed to provide her with a habitable unit, due to mould. Mould may form in a dwelling due to many contributing factors, some of which may be related to the construction of the building and others are related to the actions of the persons inhabiting the dwelling. The landlord's agents denied they were negligent in providing a habitable unit to the tenant. I find it unnecessary to determine the cause of mould, if any, that may have existed at the end of the tenancy as, even if I were to accept there was mould, the tenant would have to give the landlords written notice of a breach and an opportunity to remedy the problem before ending the tenancy. Although the landlord responded to a complaint of mould in December 2013 I find there is insufficient evidence to show that their response was insufficient or that the tenant notified the landlords of a recurrence. Certainly, the tenant did not give the landlord written notice, as she is required to do in order to end the fixed term tenancy for a material breach. Therefore, I find the tenant failed to fulfill the fixed term of her tenancy and did not end the tenancy in a manner that complies with the Act.

Having found the tenant violated the tenancy agreement and did not end the tenancy in a manner that complies with the Act, and having considered that the tenant had use and occupancy of the unit in April 2014, I find the tenant obligated to pay rent for April 2014 and I grant the landlord's request to recover unpaid of \$800.00 from the tenant.

Unpaid Utilities

The tenancy agreement clearly stipulates that rent does not include electricity. As such, I find the tenant obligated to pay for electricity consumed during her tenancy under the terms of the tenancy agreement. I find it irrelevant whether the electricity account for the property was in the tenant's name or the landlord's name. In fact, I found the tenant's position that she should not have to pay for electricity because the account was not in her name to be incredulous considering the tenant would not have had any electricity or heat had it not been for the landlord's willingness to have the Fortis account in its name. Therefore, I award the landlord the amounts claimed for electricity as those amounts are supported by the electricity bills presented to me.

I find the tenant's assertions that the electricity consumption was excessive and that the excess is the landlord's responsibility to be unsupported by any evidence to corroborate her position or that I may rely upon in determining the tenant should be permitted to deduct a specific amount from the electricity bills.

In light of the above, I grant the landlord's request to recover \$1,266.20.

Cleaning and junk removal

The Act requires that a tenant leave a rental unit reasonable clean and vacant. This means removal of all of their garbage and abandoned possessions.

The parties provided me with disputed verbal testimony as to the cleanliness and garbage left at the property. The landlords bear the burden to prove their position and that burden is based on the balance of probabilities.

During the hearing, I found the landlord's agents very forthcoming and detailed in their submissions and responses to my enquiries; whereas, I found the tenant evasive and not forthcoming during much of her testimony. As such, I found the landlord's agents highly credible and the tenant much less so. I also note the landlord provided a receipt and cheque along with an email from the housecleaner describing her cleaning efforts and I find that the evidence along with the agent's credibility leads me to prefer the landlord's position over that of the tenant. Therefore, I grant the landlord's request to recover cleaning and garbage removal costs of \$325.00 from the tenant.

Carpet cleaning

Residential Tenancy Policy Guideline 1 provides that a tenant is ordinarily held responsible for carpet cleaning if the tenant had a pet in the unit, regardless of the length of the tenancy.

In this case, the tenant had a pet in the unit and the landlord's supported its claim to recover \$135.45 from the tenant. Therefore, I award the landlord that amount.

Key cutting

The Act requires that at the end of the tenancy the tenant is to return all keys for the residential property to the landlord. Since the tenant claimed to have vacated the rental unit on April 4, 2014 she was required to return the keys to the landlord on or about April 4, 2014.

The parties provided differing testimony as to when the tenant returned the keys, with the tenant stating she returned the keys on April 4, 2014 and the landlord agent's stating the keys were returned in mid-May 2014.

Referring to my earlier finding concerning credibility, I find I prefer the landlord's version of events, and I grant the landlord's request to recover \$6.70 from the tenant for cutting more keys.

Filing fee

Since the landlord was successful in this proceeding, I further award the landlord recovery of the filing fee paid for this Application.

Security Deposit and Monetary Order

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord.

I provide the landlord with a Monetary Order in the net amount of \$2,184.35 after deducting the security deposit, as requested.

Conclusion

The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$2,184.35 to serve upon the tenant and enforce as necessary.

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: August 22, 2014

Residential Tenancy Branch

