



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MNDC, FF

Introduction

This hearing was convened in response to the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for a monetary order for money owed or compensation for damage or loss and loss of rent revenue, for authority to retain the tenants' security deposit, and for recovery of the filing fee.

The landlord and the tenants attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and both parties confirmed receipt of the other's documentary evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to retain the tenants' security deposit, further monetary compensation, and to recover the filing fee?

Background and Evidence

The written tenancy agreement shows that this tenancy involved a fixed term of one year, from July 1, 2013, through June 30, 2014, monthly rent was \$1850, and the tenants paid a security deposit of \$925 and a pet damage deposit of \$450 at the beginning of the tenancy.

The tenants vacated the rental unit on January 31, 2014, and the landlord has retained the tenants' security deposit and pet damage deposit.

The landlord's monetary claim is as follows:

Liquidated damages	\$1850
Loss of rent revenue, Feb 1-14	\$925
Unpaid hydro	\$750
Cleaning fee	\$250
Garbage removal	\$224
Carpet cleaning	\$60
New lock installation	\$350
NSF fee	\$25
Strata move-out fee	\$200
Lost wages for move-out insp.	\$245
TOTAL	\$4879

The landlord's relevant documentary evidence included, but was not limited to, the written tenancy agreement, a move-in condition inspection report, photos of the rental unit, email communication between the parties, which included concerns raised by the tenant regarding the broken mirrors in the rental unit and a cleaning list, banking information concerning the returned rent cheque for February, email communication to the landlord from the subsequent tenant regarding some issues, such as the state of the rental unit, the tenants returning to the rental unit to retrieve their personal property, and return of the keys and FOB, email communication between the landlord and the tenants regarding the circumstances surrounding the final inspection attempt and in explanation of the landlord's monetary claim, text message communication between the parties, an emailed estimate for installation costs of a new keypad, an emailed estimate for garbage removal costs, and a statement from a glass company stating that as the mirrored doors have a building code safety backing, the mirrors would still be safe even if cracked.

The tenant's relevant documentary evidence included a written response to the landlord's application, the move-in condition inspection report mentioning cracked door mirrors in the entry or hallway, and two bedrooms, a written tenancy agreement which was in dark scale due to the form contract used by the landlord, which made reading the entire document difficult, notice to the landlord of the tenants' intent to vacate by January 31, 2014, dated December 27, 2013, text message and email communication with the landlord addressing repair requests, including a bathroom fan and the cracked mirrored doors, a receipt for a carpet cleaning machine, and comments in response to the landlord's photographic evidence.

The parties provided the following oral evidence in support of and in response to the landlord's application-

Liquidated damages-

The landlord submitted that it is necessary to charge this amount, as she lives apart from the city where the rental unit is located, and she required ferry, fuel and hotel costs in re-renting the rental unit.

The tenant submitted that they should not be responsible for the landlord's travel costs, and the requested amount did not seem reasonable.

Loss of rent revenue, Feb 1-14-

The landlord submitted that she did not received the tenants' notice sent by registered mail that they were vacating until January 11, 2014, and immediately began advertising the rental unit, for a monthly rent of \$1875. The landlord did not provided copies of the advertisements, but stated that the earliest she was able to secure new tenants was February 15, 2014, causing a loss of rent revenue.

The tenants contended that the rental unit was unsafe and had been unsafe since the start of the tenancy, due to the cracked mirrored doors. Despite many requests, the landlord failed to repair the doors, and as they remained dangerous, the tenants submitted that they were entitled to end the fixed term tenancy.

Unpaid hydro-

The landlord submitted that the tenants vacated the rental unit, owing a hydro bill of \$761.23, and would require verification that the tenants had paid.

The tenants contended that the hydro bill was paid and that they had proof.

I must note that I allowed the tenants to send in proof of the paid hydro bill, after the date of the hearing. Both parties submitted bills from the municipality showing hydro billing. The tenants' bill, listed in their name, shows a final bill with a balance of \$761.23 and that this amount was paid.

The landlord's bill, listed in her name, shows a current balance of \$100.

Cleaning fee-

The landlord submitted that there were two failed attempts to schedule a move-out inspection with the tenants, and that she received a text message from the tenants on the date of the second scheduled inspection, informing the landlord they were unable to attend. The landlord submitted that the rental unit was not cleaned by the tenants, and

that she hired the incoming tenants to clean the rental unit, although there was no receipt showing a payment.

In response to my question as to the move-in condition inspection report, the landlord confirmed that there were no notations as the general condition of the rental unit, only noting that the mirrored doors were cracked, as she did not note anything unless there was something of note to mark.

The tenants agreed that they did not attend the final inspection, due to a medical procedure on the male tenant, and that they could not clean the rental unit as the locks had been changed.

The tenants stated they are not disputing the charge of \$250 for cleaning.

Garbage removal-

The tenants agreed to the charge.

Carpet cleaning-

The landlord acknowledged a carpet cleaning odour, but that cat hair and stains remained.

The tenants submitted that they rented a carpet cleaning machine, and did not damage the carpet, as the carpet was left with reasonable wear and tear. The tenants further submitted that the carpet was far from new.

New lock installation-

The landlord submitted that the new tenants requested a lock change, and because this involved a keypad with a deadbolt, the charge was expensive. The landlord submitted that the tenants failed to return all keys they had cut and the FOB by January 31, 2014.

The tenants questioned the timing or the necessity of a key change, as a cleaning person had access to the rental unit.

NSF fee-

The landlord submitted she is entitled to this fee as the rent cheque for February was returned.

Strata move-out fee-

The landlord submitted that the tenants were responsible for strata incurred charges, as they signed a Form K, agreeing to the same.

The tenants submitted that they did not remember signing a Form K.

Lost wages for move-out inspection-

The landlord submitted that she lost wages due to having a failed move-out inspection, as she lives in another city.

The tenants submitted that they were unaware the landlord lost wages.

Analysis

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Liquidated damages-

Residential Tenancy Branch Policy Guideline #4 (Liquidated Damages) states that in order to be enforceable, a liquidated damages clause in a tenancy agreement must be a genuine pre-estimate of loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. If the liquidated damage clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible. The landlord claims the liquidated damages were intended to compensate her for expenses for travel to the rental unit, as she lives in another part of the province requiring ferry travel and hotel/fuel expenses.

In the case before me, I find the landlord failed to submit convincing evidence that the amount of \$1850, a full month's rent, was a genuine pre-estimate of costs to re-rent the rental unit when the only advertising used by the landlord was through no-fee websites. I also do not find that the tenants are responsible for the travel costs of the landlord and there was no evidence that the tenants were informed that they would be charged for a full month's rent or an explanation of the costs incurred to re-rent the rental unit.

While I find that the liquidated damages should be struck down as being a penalty, I find the landlord should be awarded an amount due to this clause in the tenancy agreement and that the amount listed in the tenancy agreement may be considered as an upper range of the amount awarded to the landlord according to this section of the Policy

Guideline. I find a reasonable amount under these circumstances to be \$500 and I therefore award the landlord the amount of \$500.

Loss of rent revenue, Feb 1-14-

Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term.

In the case before me, I accept that the tenants provided insufficient notice that they were ending the fixed term tenancy agreement prior to the end of the fixed term and I find the tenants were responsible to pay monthly rent to the landlord until the end of the fixed term, here, June 30, 2014, subject to the landlord's requirement that she take reasonable measures to minimize her loss.

I find that the landlord submitted insufficient evidence that she has suffered a loss of rent revenue from February 1-14, due to the tenants' breach of the Act. In making this determination, I considered the landlord's documentary evidence, which clearly shows that the succeeding tenants had taken possession of the rental unit no later than February 2, 2014, and no proof was provided of when the new tenancy started, such as the succeeding tenants' tenancy agreement.

Due to the landlord's inconsistent and contradictory evidence, I dismiss the landlord's claim for loss of rent revenue for February 1-14, in the amount of \$925.

Unpaid hydro-

I find the evidence of both parties show that the tenants paid in full their final bill, in the amount of \$761.23. The subsequent bill received by the landlord and in her name shows an outstanding amount of \$100. Both bills have an identical billing date of January 29, 2014, through February 15, 2014.

The tenants' copy of their bill show a billing from that current billing period, of \$90.39 and that this amount was paid. I therefore find that there was no clear explanation as to why the landlord would receive another bill for \$100 for the same billing period, and due to the unclear evidence, I find the landlord has not met her burden of proof.

I must also note that I would still make the same conclusion, as I find the tenants' responsibility to pay for hydro for the rental unit ended on January 31, 2014, the last day of the tenancy and would not run through February 15, 2014.

I therefore dismiss the landlord's monetary claim for unpaid hydro.

Cleaning fee-

As the tenants agreed in the hearing they were not disputing this charge, I approve landlord's monetary claim of \$250.

Garbage removal-

As the tenants agreed in the hearing to the garbage removal charge, I approve the landlord's monetary claim of \$224.

Carpet cleaning-

Policy Guideline #1 suggests that at the end of a tenancy, regardless of the length, a tenant is generally responsible for steam cleaning a carpet. I find the tenants submitted sufficient evidence, through their receipt and the landlord's acknowledgment that she noticed a cleaning smell, that they did steam clean the carpets and therefore fulfilled their requirements regarding a carpet cleaning.

I also took note that the landlord did not list the condition of the carpet at the beginning of the tenancy, which is her requirement under the Act and Regulations and that she provided no proof of a loss, such as through a receipt or invoice.

I therefore dismiss the landlord's monetary claim of \$60.

New lock installation-

The landlord's evidence of an emailed estimate was received on February 20, which shows to me that as of that date and after new tenants had moved into the rental unit, the locks had not been changed. Further the landlord provided no proof of incurred costs and the new tenants' email to the landlord shows that the new tenants were to re-key the entry door, with the hope of not having to change the door handle/lock unit.

I therefore find the landlord has not met her burden of proof and I dismiss her claim for \$350.

NSF fee-

As of January 31, 2014, the tenancy had ended due to the tenants vacating the rental unit that day. I therefore do not accept the landlord's claim for NSF charges, as the rent cheque for a tenancy that had ended should not have been deposited into the landlord's account.

I dismiss the landlord's claim for \$25.

Strata move-out fee-

In this case, I find the landlord failed to prove that the tenants signed a Form K-Notice of Tenant's Responsibility with the tenancy agreement, which is a written acknowledgement that the tenants, renting within a strata development, have received a copy of the strata bylaws and agree to abide by them.

Without the form being signed by the tenants, the rules or bylaws do not become part of the tenancy agreement, and consequently, the tenants are not obligated to abide by the bylaws or pay the fines, as these issues are considered outside the jurisdiction of the Residential Tenancy Act.

As landlord failed to prove that the tenants signed the Form K, which becomes part of the tenancy agreement, I find that the landlord has failed to prove that the tenants have violated the tenancy agreement or the Act, and I dismiss her claim for \$200.

I must note that I also considered that the landlord failed to submit proof that she has incurred a strata fine.

Lost wages for move-out inspection-

As to the landlord's request for lost wages in attending a move-out inspection, I find that the landlord has chosen to incur costs that cannot be assumed by the tenants. I do not find the tenant to be responsible for the landlord choosing to rent a property in another town from where the landlord resides. The landlord has a choice of appointing an agent in the same town as the rental unit. The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of Act and not for costs incurred to conduct a landlord's business, such as traveling to the rental unit.

Therefore, I find that the landlord is not entitled lost wages, which I note she failed to prove through documentary evidence, as this is a cost which is not named by the *Residential Tenancy Act*. I therefore dismiss the landlord's claim for \$245.

As I have found that the landlord application had at least partial merit, I award the landlord recovery of her filing fee of \$50 paid for this application.

Due to the above, I find the landlord is entitled to a monetary award of \$1024, comprised of a partial liquidated damages fee of \$500, cleaning of \$250, garbage removal of \$224, and the filing fee of \$50.

Conclusion

I have granted the landlord's application for dispute resolution in part and awarded her monetary compensation in the amount of \$1024.

At the landlord's request, I allow her to retain the amount of her monetary award of \$1024 from the tenants' security deposit of \$925 and pet damage deposit of \$450, in satisfaction of her monetary award.

As there is a balance left from the security deposit and the pet damage deposit, I order the landlord to return that balance of \$351 to the tenants.

As I have ordered the landlord to return the balance, I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for amount of \$351, which I have enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants this amount without delay, the order may be served upon the landlord and thereafter filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement may be recovered from the landlord.

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* and is being mailed to both the applicant and the respondents.

Dated: July 14, 2014

Residential Tenancy Branch

