



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MND, FF

Introduction

This hearing was convened to deal with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for a monetary order for alleged damage to the rental unit and unpaid rent, for authority to retain the tenants' security deposit, and for recovery of the filing fee.

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

The evidence was discussed and no party raised any issue regarding service of the evidence or application.

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 each to the other, 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.

Preliminary matter-Under section 11.8 of the Rules in effect when the landlord's application was filed, the party submitting digital evidence must ask the other party if that party was able to gain access to the digital evidence. In this case, the tenant denied receiving the digital evidence and I have no evidence that the landlord made inquiry of the tenants as to whether or not they were able to gain access to the digital evidence. Therefore I have excluded the landlord's digital evidence, and proceeded on his documentary evidence and the oral evidence of the parties taken at the hearing.

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 landlord's evidence shows that the parties entered into a "half month lease" for a tenancy start date of January 16, 2014, and that they executed another document entitled a "12 month lease," again for a tenancy start date of January 16, 2014. That tenancy agreement shows that the fixed term of the tenancy was from February 1, 2014, to run through January 31, 2015. The 2 tenancy agreements were signed on the same day, January 16, 2014.

The landlord submitted that the tenants vacated the rental unit on March 2nd or 3rd, and the tenants submitted that they vacated the rental unit on March 1, 2014.

The monthly rent listed in the tenancy agreement was \$1550, with a monthly discount of \$100 in exchange for lawn maintenance by the tenants.

The landlord submitted that the tenants paid a security deposit of \$435, and the tenants submitted that they paid a security deposit of \$725.

The landlord's monetary claim listed in his application is as follows:

March rent	\$1450
Cleaning and carpet cleaning	\$450
Electrician	\$85
Home store expenses	\$147.04
Wall damage repair	\$450
Filing fee	\$100
Balance of rent owed under fixed term	\$15,000
TOTAL	\$17250.04

The landlord's additional relevant documentary evidence included a move-in and move-out condition inspection report, not signed by the tenant at the move-out date, a written witness statement mentioning issues with the rental unit at the end of the tenancy, home store receipts, the tenants' notice that they were vacating sent via text message,

rent and security deposit receipts, an electrician's receipt, two receipts for cleaning, and a document relating to information for wall damage repair.

The tenants did not submit documentary evidence.

The parties submitted the following testimony in support of and in response to the landlord's application-

March rent; balance of rent owed under fixed term-

The landlord claimed that he is entitled to the rent for March, as he received the tenants' notice on February 18, 2014, via text message that they were vacating the rental unit on March 1, resulting in a loss of rent for that month as the tenants were still in the rental unit and did not pay rent due for March 2014. Additionally the landlord submitted that when he received the tenants' notice on February 18, 2014, he immediately began advertising the rental unit in order to obtain new tenants as soon as possible. Due to this and the fixed term of the tenancy agreement, the landlord submitted that he is entitled to a loss of rent revenue of \$1450 for the month of April as well.

In response, the tenant submitted that although they did not provide a text message notice to vacate until February 18, they had discussions with the landlord about moving out early, due to issues with the tenants in the lower rental unit. These issues included harassment and those tenants entering their rental unit unannounced. Other issues include mice and a broken hot tub, and the landlord was fine with the tenants moving out, according to the tenants.

In rebuttal, the landlord submitted that there were no mice in the rental unit, no bullying or harassment, the hot tub did work, and that the lower tenants made noise complaints about the tenants.

In surrebuttal, the tenants submitted that they have never had any noise complaints about them in any other previous tenancies.

Cleaning and carpet cleaning-

The landlord submitted that the tenants failed to properly clean the rental unit and left the carpet dirty, including wearing shoes. The carpet was in a state which required cleaning after this tenancy.

The landlord confirmed that the cleaner he hired was not a professional cleaner and did not charge hourly rates, and that he provides a cleaning between each tenancies.

The tenants' responded, but the response was not relevant to the issue.

Electrician-

The landlord submitted that the smoke alarm in the rental unit was tampered with by the tenants and because the alarm was hard wired into the electrical system, it was necessary to call an electrician for repairs.

The tenants submitted that they did not damage the smoke alarm, as they just unclipped the alarm from the wall due to the alternating alarm with the lower tenants.

In response, the landlord submitted the alarms between the two rental units are not connected and not alternating.

Home store expenses-

The landlord submitted that he incurred expenses at the hands of the tenants for a new smoke alarm, light bulbs, and keys, due to the damaged smoke alarm, the tenants' removal of expensive light bulbs which were in the rental unit at the beginning of the tenancy, and the tenants' failure to return the keys to the rental unit.

Wall damage repair-

The landlord submitted that that the tenants damaged the walls during the tenancy and that the male tenant at the move-out inspection agreed that they did.

The tenants submitted that the walls were already scratched at the start of the tenancy and that the landlord had said that he did not worry about scratches.

The tenants questioned the authenticity of the landlord's evidence in support of this claim.

The testimony of the landlord's witness-

The witness stated that he was present at the move-out inspection, at which time the dangling cord from the smoke alarm was noticed and pointed out to the male tenant, as the female tenant did not attend. According to the witness, the tenant admitted the

damages and that the landlord could keep the tenants' security deposit; however, that agreement seemingly changed when the tenant phoned the other tenant.

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.

March rent; balance of rent owed under fixed term

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

Although the parties were in dispute as to the day of the month in March on which they vacated, the tenants were clearly in possession of the rental unit on March 1, and therefore owed rent to the landlord on that day, according to the tenancy agreement and failed to do so.

As to the remainder of March and the fixed term of the tenancy agreement, Section 45(2) of the Act states that a tenant must give 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.

Although the landlord confirmed receiving notice that the tenants were vacating on March 1, this notice was in text message form, which is not an allowed or recognized method for delivery of documents under section 88 of the Act.

In the case before me, I accept that the tenants provided insufficient notice under the Act that they were ending the fixed term tenancy agreement prior to the end of the fixed term and I find the tenant was responsible to pay monthly rent to the landlord until the end of the fixed term, here, January 31, 2015, subject to the landlord's requirement that he take reasonable measures to minimize his loss.

In the case before me, it is clear that the landlord is entitled to receive unpaid rent or loss of rent revenue for the month of March, as the tenants remained in the rental unit through at least March 1, and due to their notice of February 18, 2014, I find it unlikely that the landlord would be able to secure new tenants for any portion of March. I therefore grant him a monetary award of \$1450 as requested.

As to further loss of rent revenue beyond March, I do not have any evidence that the rental unit remained empty until May or of the efforts taken by the landlord to have the rental unit re-rented as quickly as possible, as the landlord failed to submit a copy of the next tenancy agreement or copies of the advertisements. Therefore I was unable to examine the form, frequency, and content of the advertisements. For instance, I was not able to determine if the asking monthly rent was greater than that of the tenants' monthly rent, or, if after a period of time, the landlord reduced the asking monthly rent in order to entice a new tenant more quickly.

I therefore find that the landlord submitted insufficient evidence of step 4 of his burden of proof, which is that he took reasonable steps to minimize his loss, and I therefore dismiss his claim for loss of rent revenue for April 2014.

At the hearing, the landlord provided no evidence that he wished to proceed on his original claim for loss of rent revenue for the balance of the fixed term, only mentioning loss of rent revenue through April. I have therefore not dealt with any further alleged losses for rent revenue, although the assumption was that the landlord had acquired new tenants by May.

Cleaning and carpet cleaning-

To the detriment of the tenants, they failed to sign the move-out condition inspection report, which has a space on the form to note their disagreement with the condition as marked by the landlord. I therefore am compelled to find that the condition as marked by the landlord is undisputed. The condition shows that the rental unit was not left reasonably clean by the tenants, including the carpet, as is their requirement under section 37(2) of the Act.

I therefore find the landlord, through the condition inspection report and receipts, submitted sufficient evidence to support his claim for cleaning and carpet cleaning and grant him a monetary award of \$450.

Electrician-

I find the landlord, through the condition inspection report, his witness, and a receipt, submitted sufficient evidence that the smoke alarm required repair and I therefore grant him a monetary award of \$85.

Home store expenses-

I find the landlord submitted sufficient evidence through the condition inspection report, testimony, his witness, and receipts that he incurred expenses for light bulb replacement, new keys, and a smoke alarm at the hands of the tenants and I therefore grant the landlord a monetary award of \$147.04.

Wall damage repair-

I was less convinced by the landlord's documentary evidence for wall damage repair. The document provided did not indicate that this was an expense incurred, or that the repairs were performed. I also took note that there were scratches noted on the move-in condition inspection report.

Due to this, I find the landlord submitted insufficient evidence to support his claim for wall repair damage and I dismiss his claim for \$450.

I approve the landlord's request for recovery of the filing fee paid for this application and I award him \$100.

Due to the above, I find the landlord is entitled to a total monetary award of \$2232.04, comprised of unpaid rent for March of \$1450, cleaning and carpet cleaning of \$450, electrician's costs of \$85, home store expenses of \$147.04, and the filing fee of \$100.

I also accept that the tenants paid a security deposit of \$435, instead of \$725, as the landlord provided proof in the form of receipts, and the tenants failed to provide any documentary evidence to support their statements that they paid \$725.

Conclusion

I have granted the landlord's application for dispute resolution and awarded him a monetary award in the amount of \$2232.04.

At the landlord's request, I allow him to retain the tenants' security deposit of \$435, in partial satisfaction of his monetary award.

I therefore grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$1797.04, which I have enclosed with the landlord's Decision.

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

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 18, 2014

Residential Tenancy Branch

