



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: MNR, MNDC, OLC, ERP, RP, PSF
For the landlord: MNR, MNDS, MNDC, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The tenant applied for a monetary order for the cost of emergency repairs, a monetary order for money owed or compensation for damage or loss, for an order requiring the landlord to comply with the Act, an order requiring the landlord to make repairs and emergency repairs to the rental unit, and an order requiring the landlord to provide services or facilities required by law.

The landlord applied for authority to retain the tenant’s security deposit and pet damage deposit, a monetary order for unpaid rent and for money owed or compensation for damage or loss, and for recovery of the filing fee.

Both parties attended the telephone conference call hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter all parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, make submissions to me and respond to the other’s evidence.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

I have reviewed the oral and written evidence of the parties 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-The tenancy has now ended and as a result, I have severed that portion of the tenant’s application dealing with a request for orders for the landlord to deal with his monetary claim, and dismissed that excluded portion without leave to reapply, as these are issues in contemplation of an ongoing tenancy.

Issue(s) to be Decided

1. Is the tenant entitled to monetary compensation?
2. Is the landlord entitled to monetary compensation and to recover the filing fee?

Background and Evidence

The undisputed evidence was that this tenancy began on September 1, 2013, and monthly rent was \$625. The tenant submitted he vacated the rental unit on June 15, 2014, and the landlord submitted that she did not know the tenant vacated the rental unit as he never provided a notice to her.

The landlord submitted that the tenant paid a security deposit of \$312.50 and a pet damage deposit of \$200, as noted in the written tenancy agreement, not the amounts claimed by the tenant to be returned. These two deposits have not been returned as of yet.

Tenant's application-

The tenant's monetary claim is \$1600, comprised of \$700 for stolen cash, \$15 for toilet paper, \$20 for cat food, \$25 for jewelry, \$20 for miscellaneous items such as a bankcard, phone and charger, \$325 for the security deposit, \$250 for the pet damage deposit, and \$25 for lock replacement.

In support of his application, the tenant submitted that the door to his rental unit and the front door to the residential property was damaged and unsecured, which led to his rental unit being burglarized. The tenant submitted that that due to the burglary, he lost cash of \$700 for the February rent, and the other stolen.

In further support, the tenant submitted that the skylight was not bolted down and the locks were required to be replaced.

The tenant submitted also that the unsafe conditions with the damage door and the burglary led him to vacating the rental unit for the safety of him and his family as the landlord failed to address the repairs, despite his written request of May 16, 2014. The tenant submitted that he replaced the deadbolt to the rental unit.

As the landlord has failed to address the security of the rental unit and residential property due to damaged doors, the landlord should be responsible for his stolen personal property, according to the tenant.

The tenant's relevant documentary evidence included written submissions supporting his position and claim.

In response, the landlord submitted that she asked the maintenance person to attend the rental unit, and he reported that there had been no forced entry. The locks were changed on May 7, and a supporting sleeve to the door was attached on May 21, 2014, according to the landlord.

The landlord submitted that the tenant has never mentioned the skylight to her and that at the end of January 2014, the tenant phoned her and said that he had \$700 fall out of his pocket at a bar.

The tenant responded and said that he informed the landlord's husband about the skylight and told the maintenance person that the door required replacement.

Landlord's application-

The landlord's monetary claim is \$1325, comprised of a rent deficiency of \$775 for May, and \$625 for June. The landlord also claimed for unpaid rent of \$625 for July.

The landlord submitted that the tenant did not pay rent for May, June, or July, and that she never received a notice from the tenant that he was vacating. The landlord pointed out that the tenant was still living in the rental unit at least until June and failed to pay rent.

The landlord's relevant documentary evidence included photos of the repaired door, the tenancy agreement, receipts for a door lock replacement and repair, and written witness statements.

In response, the tenant submitted that he had an agreement that he could be short on rent and the other months, the tenant submitted that he did not pay rent because the landlord failed to come by the rental unit to collect the rent.

The tenant agreed that he never provided notice to the landlord that he was vacating, but that the landlord was informed when she received his evidence which was sent on July 2. The tenant submitted that he had the rental unit cleaned and vacant by June 17.

Analysis

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party 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.

Tenant's application-

I find the tenant submitted insufficient evidence to support his claim that cash of \$700 or any other items of personal property were stolen or that his home was burglarized. If the rental unit was in fact burglarized, the tenant would be able to make a claim with renter's insurance, which is his obligation to purchase and carry.

Due to the tenant's insufficient evidence, I dismiss his application, without leave to reapply.

Landlord's application-

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. Therefore I find the tenant owed rent for May and June and failed to pay.

Additionally, section 45(1) of the Act requires a tenant to give written notice to end the tenancy one clear calendar month before the next rent payment is due is required in giving written notice to end the tenancy. Therefore, even though the tenant may have vacated the rental unit by June 17, he has not given the landlord written Notice that he was or had vacated the rental unit, and I therefore find he was obligated to pay rent to the landlord for July 2014 and that the landlord is entitled to a loss of rent revenue for the month of July for \$625.

I also find the landlord has proven that the tenant owed and failed to pay rent of \$625 for May and June 2014. I, however, find the landlord submitted insufficient evidence that there was a rent deficiency for May in excess of \$625, as their claim was \$775 for that month, due to the landlord's failure to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities or to provide any accounting records or other evidence to confirm that there was an existing rent deficiency from prior months as of May 1, 2014. I therefore find that the landlord is not entitled to \$775 for May, but is still entitled to \$625 for May.

Due to the above, I find the landlord is entitled to a total monetary award of \$1925, comprised of unpaid rent of \$625 for May and June each, a loss of rent revenue of \$625 for July, and for recovery of the filing fee paid for this application of \$50.

Conclusion

The tenant's application has been dismissed.

The landlord's application has been granted.

At the landlord's request, I allow the landlord to retain the tenant's security deposit of \$312.50 and pet damage deposit of \$200, which were the amounts listed on the written tenancy agreement, in partial satisfaction of their monetary award of \$1925 and I grant the landlord a final, legally binding monetary order for the balance due pursuant to section 67 of the Act for the amount of \$1412.50, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after the order has been served upon him, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

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: July 21, 2014

Residential Tenancy Branch

