



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: MNDC, FF
For the landlord: MNDC, MND, 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 money owed or compensation for damage or loss and for recovery of the filing fee paid for this application.

The landlord applied for a monetary order for money owed or compensation for damage or loss and alleged damage to the rental unit, and for recovery of the filing fee paid for this application.

The tenant and the landlord 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 both 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, the tenant mentioned that the landlord had not served his application to him, the tenant, in a timely manner, which possibly made his responsive evidence late. I note that all the parties’ documentary evidence was received by each party and by the Residential Tenancy Branch (“RTB”), and all evidence was accepted.

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.

Issue(s) to be Decided

1. Is the tenant entitled to monetary compensation and for recovery of the filing fee paid for this application?
2. Is the landlord entitled to monetary compensation and for recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence shows that this tenancy began on March 27, 2013, ended on March 28, 2014, the monthly rent listed in the written tenancy agreement provided by the parties was \$400, and the tenant paid a security deposit of \$200, which has been returned to the tenant.

Tenant's application-

The tenant's monetary claim is \$700, which is \$400, as monetary compensation equivalent to 1 month's rent for receiving a 2 Month Notice to End Tenancy for Landlord's Use of the Property (the "Notice") from the landlord, \$250 in overpaid rent due to an alleged illegal rent increase, and for recovery of the filing fee paid for this application of \$50.

As to his claim for \$400, the tenant submitted that he received a 2 Month Notice from the landlord on March 16, 2014, provided his notice to the landlord on March 19, 2014, that he was vacating at the end of the month, and then vacated by March 28, 2014. The tenant submitted that he was entitled to compensation equivalent to 1 month's rent due to having been issued the 2 Month Notice.

As to his claim for \$250, the tenant submitted that he, as required by the written tenancy agreement, paid \$400 per month for monthly rent, until November 1, 2013, when he began paying \$450 per month, as the landlord gave him notice of an illegal rent increase, from \$400 to \$450 per month. The tenant submitted further that he is entitled to be reimbursed for the months he overpaid rent, or \$50 per month from November 2013 through March 2014.

Landlord's response-

The landlord submitted that his error caused him to issue the tenant a 2 Month Notice, as he had intended to issue him a 1 Month Notice to End Tenancy for Cause. In his evidence, the landlord acknowledged that he owed the tenant \$400, due to his error.

As to the increased rent, the landlord submitted the rental rate of \$400 was to be temporary, as the normal rent for this rental unit was \$450. The landlord submitted further that the increased rent was for extra heating costs in the winter months.

Landlord's application-

The landlord's monetary claim is \$375. The landlord failed to provide a detailed calculation, but stated that the claim was for damage by the tenant to the yard of the residential property, for grass seed and labour, and a broken lock and chain to an outside gate. The landlord submitted further that the tenant parked on the grass during a time where there was snow, which caused the landlord to patch and re-seed the yard.

The landlord's relevant documentary evidence was photographs of the yard and a copy of a 2 Month Notice.

Tenant's response-

The tenant submitted that there was no intentional damage to the yard, but some slight damage occurred when he had to drive out of a muddy area right after the snow. The tenant submitted further that he repaired the grooves in the yard and that the landlord designated that spot for him to park.

The tenant denied breaking the lock to the gate, only reporting the broken lock to the landlord.

Analysis

Tenant's application-

Compensation equivalent to 1 month's rent-

Under section 51 of the Act, a tenant who receives from the landlord a notice to end the tenancy under section 49 of the Act, as is the case here when the landlord issued the tenant a 2 Month Notice, is entitled to compensation equivalent to 1 month's rent.

I accept the undisputed evidence of the tenant that he received the 2 Month Notice from the landlord on March 16, 2014, that he supplied the landlord written notice on March 19, 2014, that he was vacating the rental unit at the end of the month, and I therefore find that he is entitled to receive this compensation. I therefore find he is entitled to a monetary award of \$400.

Reimbursement of rent increase-

Under section 42 of the Act, a landlord may not impose an additional rent increase earlier than 12 months, and must give 3 months' notice of the increase on the approved form.

Section 43 states that the tenant is entitled to recover the increase if the landlord fails to comply with the Act in increasing the rent.

In this case, I find the tenancy agreement was clear that monthly rent, established on March 27, 2013, was \$400 per month, and therefore, the earliest the landlord could increase the rent was March 27, 2014. The landlord, however, gave the tenant a handwritten demand, earlier than 12 months, not on the appropriate form and not in an allowable amount, that he pay \$50 per month more, and that the tenant did pay an additional \$50 for November and December 2013, January, February, and March 2014 over his obligation in the written tenancy agreement. I therefore find the tenant is entitled to recover his rent overpayment, or \$250, \$50 for each of the five months of overpayment. As such, the tenant is granted a monetary award of \$250.

I also award the tenant recovery of the filing fee he paid for this application, or \$50.

Due to the above, I find the tenant is entitled to a total monetary award of \$700, comprised of \$400 for compensation for receiving a 2 Month Notice, \$250 for recover of rent overpayment, and the filing fee of \$50.

Landlord's application-

I find the landlord failed to supply evidence of the state of the yard prior to the tenant moving in and I therefore could not determine whether any alleged damage was due to the tenant's actions. In addition, the areas in the yard and grass as depicted in the landlord's photographs appear to be reasonable wear and tear after a winter with snow.

I also considered that the landlord failed to supply proof or verification of a monetary loss.

Due to the landlord's insufficient evidence, I dismiss the landlord's application as I find that he has not supported his monetary claim. As I have dismissed the landlord's application, I therefore dismiss his request for recovery of the filing fee.

Conclusion

The tenant's application for monetary compensation is granted.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of their monetary award of \$700, which is enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant 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 landlord is advised that costs of such enforcement are recoverable from the landlord.

The landlord's application is dismissed, without leave to reapply.

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: September 25, 2014

Residential Tenancy Branch

