



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for authority to retain the tenant's security deposit, 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 and tenant 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.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, 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-I note that the tenant, through her responsive documentary evidence, included a monetary claim. I informed the tenant that a monetary claim may only be considered through her own application, and not through evidence. I therefore have not considered any compensation requests of the tenant.

Issue(s) to be Decided

Is the landlord entitled to authority to retain the tenant's security deposit, further monetary compensation, and for recovery of the filing fee paid for this application?

Background and Evidence

This undisputed evidence shows that this tenancy originally began on September 1, 2009, ended on April 30, 2014, the starting monthly rent was \$2300, and the tenant paid a security deposit of \$1150 at the beginning of the tenancy. The tenant's security deposit has been retained by the landlord.

The landlord's monetary claim listed in their application was \$1409.07; however, the landlord submitted at the hearing that they were claiming the amount of \$776.38, for an oil tank top-up, \$232.21 for an unpaid utility bill owed the municipality, and the filing fee for this application in the amount of \$50, with a request to retain the tenant's security deposit for these amounts, plus projected gardening costs.

In support of their application, the landlord submitted that the oil tank at the rental unit was filled at the beginning of the tenancy, and therefore, the tenant, who was responsible for utilities, is required to fill the tank at the end of the tenancy. In support of this claim, the landlord submitted a delivery history statement from the fuel company showing that the oil tank was filled as of July 21, 2009, a copy of the delivery made on April 24, 2014, and the tenancy agreement.

The landlord submitted further that the tenant failed to pay the final utility bill owed to the municipality, and that she should be responsible for repayment, as the landlord has now paid that bill, in September 2014.

The landlord submitted further that the tenant should be liable for gardening costs of \$200 for soil and seed purchase, and for the gardener.

The landlord's additional relevant documentary evidence included a copy of the municipality's utility bill, other subsequent tenancy agreements, and copies of photos of the yard at the rental unit.

Tenant's response-

The tenant submitted that she never used a lot of oil for heating, as she used baseboard heating and space heaters.

The tenant submitted further that she filled the tank for the final inspection, but despite requests for proof of oil capacity at the beginning of the tenancy, the landlord failed to provide such proof.

The tenant further submitted that she asked for proof of the water bill, as she stopped the bill prior to April 30, and requested that the last bill be sent to her new address. When she did receive a bill, the due date was June 2, 2014, with no explanation. The tenant submitted further that she assumed the landlords had already paid the bill prior to September, as they claimed for it in their application.

As to the gardening request, the tenant submitted that there has never been an actual garden, as the yard was mostly moss, which the landlord suggested leaving to soak up the water. The tenant submitted that the yard was part of her daycare business, the landlords were well aware of her business as they had solicited her to be a tenant, and that an unknown male linked to the landlord entered the residential property unannounced and damaged the greenery.

The tenant submitted further that no condition inspections took place at the beginning of the tenancy, a statement undisputed by the landlord.

The tenant's relevant documentary evidence included a written statement of defence, the original written tenancy agreement, email communication between the parties, and copies of photos of the yard at the rental unit.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that occurs as a result, so long as the applicant verifies the loss, as required under section 67. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

Oil tank costs-

In examining the evidence of the landlord, I find the landlord failed to submit proof of the level of oil in the tank at the beginning of the tenancy on September 1, 2009, as the evidence shows a fill-up by the fuel company on July 21, 2009, with nothing further. Additionally the evidence of the landlord shows the approximate cost of oil on May 28, 2014; however, the tenancy ended on April 30, 2014.

As I find the landlord failed to submit proof of the oil level on the day the tenancy began and the day the tenancy ended, I therefore find the landlord submitted insufficient and inconclusive evidence of the amount of oil for which the tenant would be responsible for replacing in the oil tank and therefore their request for the cost of oil is dismissed.

Unpaid utility bill for the municipality-

Although I find no fault on the part of the tenant that the final bill was left outstanding, as I find that she did attempt to discover the costs of the final bill or have it delivered to her, I find the tenant does owe this amount for her usage. I therefore approve the landlord's claim of \$243.82, as reflected on the final bill.

Gardening costs-

Due to the lack of a move-in condition inspection report to substantiate the state of the yard at the beginning of the tenancy, and due to lack of proof that the landlord has

expended any sums for lawn repair, I find the landlord submitted insufficient evidence to support their claim for gardening costs.

I decline to award the landlord recovery of their filing fee of \$50.

Due to the above, I find the landlord is entitled to a total monetary award of \$243.82 for costs of the final utility bill for the municipality, which included water and sewer.

Conclusion

The landlord's application for monetary compensation is granted in small part.

I direct the landlord to retain the amount of \$243.82 from the tenant's security deposit of \$1150, and order that they return the balance of the tenant's security deposit to the tenant, in the amount of \$906.18.

As I have ordered the landlord to return the balance of the tenant's security deposit, I grant the tenant a monetary order in the amount of \$906.18, which is enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the tenant may serve the order on the landlord and it 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.

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: October 20, 2014

Residential Tenancy Branch

