



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MND, MNDC, FF

Introduction

This hearing dealt was convened as the result of the landlords' application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlords applied for authority to retain the tenant's security deposit, a monetary order for money owed or compensation for damage or loss, unpaid rent, and alleged damage to the rental unit, and for recovery of the filing fee paid for this application.

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

Thereafter all parties gave affirmed testimony, 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- The evidence was discussed and no party raised any issue regarding service of the evidence, with the exception of the tenant's digital evidence. The tenant confirmed that she did not provide the landlord with a duplicate USB flash drive that she submitted along with her documentary evidence. As a result, I have excluded the tenant's digital evidence, pursuant to the Rules.

Issue(s) to be Decided

Are the landlords entitled to retain the tenant's security deposit, further 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 October 1, 2013, for a fixed term through September 30, 2014, ended on or about April 14, 2014, when the tenant vacated the rental unit, monthly rent was \$1200, and the tenant paid a security deposit

of \$600 and a pet damage deposit of \$600. The landlord submitted without dispute that she has retained the tenant's security deposit and has returned the pet damage deposit through a rent credit for December 2013.

The landlord's monetary claim listed through her documentary evidence was as follows:

Cleaning	\$885
Unpaid rent, April	\$1200
Loss of rent revenue, May 1-15	\$600
"Rerent" levy	\$600
Filing fee	\$50
Total	\$3335

The landlord's relevant documentary evidence included, but was not limited to, a written argument in support of their application, a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a written tenancy agreement, a 1 page move-in condition inspection report and a similar 1 page move-out condition inspection report, and photographs of the rental unit.

In support of and in response to, the parties provided the following submissions:

1. Cleaning

The landlord submitted that she expended 29.5 hours after the tenancy in cleaning the rental unit, at \$30 per hour which is what she charges for all new customers for her cleaning business. The landlord submitted further that the rental unit was "spotless" when the tenant moved in and she expected the rental unit to be in the same condition at the end of the tenancy. Some of the cleaning included washing walls, cleaning the blinds and oven, cleaning liquid from the floor, and removing dog excrement.

In response, the tenant submitted that the rental unit was clean when she left and that the landlord had to install another window to make it a three bedroom rental unit after she left, so there would be cleaning involved. The tenant submitted further that she would never leave the rental unit as shown in the landlord's photos, and specifically denied leaving the toilet, oven, walls and floors as shown. The tenant denied that the pictures were of the rental unit.

The tenant submitted further that she was not aware of an inspection of the rental unit and that she received a copy of the condition inspection report only with the landlord's evidence.

The tenant further argued that the rental unit was always in good condition, that pictures were provided in December to the landlord, and denied fault with the water stains.

2. Unpaid rent, April

The landlord submitted that the tenant did not pay rent for April 2014, as required by the tenancy agreement.

In response, the tenant submitted the landlord's advertised and rented a 2 bedroom rental unit, and due to the missing window in a bedroom, she effectively had and paid for a 1 bedroom rental unit.

3. Loss of rent revenue, May 1-15

The landlord submitted that the tenant phoned her at the end of March 2014, and informed her that she could not pay rent for April and that she, the tenant, would leave when she wanted. The landlord, in response to my question, stated that she began advertising the rental unit in online sites and on posters around town, at the beginning of April.

The tenant submitted that the landlord is not entitled to loss of rent revenue because the landlord had to renovate the rental unit after she left.

4. "Rerent" levy

The landlord submitted that the tenant was obligated under section 66 of the written tenancy agreement to pay a "levy" of \$600 if she moved out prior to the natural expiration of the lease. The landlord submitted further that she charges a rent levy as she lives out of town away from the rental unit, and is required to drive back and forth to show prospective tenants the rental unit.

In response, the tenant submitted that she was not responsible for the levy.

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.

1. Cleaning

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear. In the case before me, the landlord's standard for a vacating tenant, that the rental unit be left in "spotless" condition, in other words, move-in ready for the next tenant, is much greater than required under the Act.

In addressing the landlord's claim, I examined the landlord's condition inspection report and found the same to be deficient as required by the Residential Tenancy Regulations, particularly section 20. For instance, the condition inspection reports did not contain the address for service for the landlord, notations of the windows and coverings, deficient space on the report to notate any issues, and space for a statement by the tenant to notate agreement or disagreement with the report.

Section 35 of the Act requires that a landlord provide a tenant with 2 opportunities for a final inspection of the rental unit and Section 17 of the Regulations sets out the method of scheduling the proposed inspection. In this case, there was no evidence from the landlord that she offered the tenant two such opportunities. I also examined the photographs of the rental unit at the end of the tenancy supplied by the landlord and found that the rental unit was left at least reasonably clean, with the possible exception of the oven, dirt, flies, and a sticky substance on the floor, and scuffs on the wall. The landlord, however, failed to provide the tenant with 2 opportunities to attend the final inspection so that the tenant could provide an assessment of the condition.

Due to the insufficient condition inspection report and the failure to provide the tenant 2 opportunities to the tenant for a final inspection, I found I could not rely upon the inspection report or the landlord's photographs, in the absence of the tenant, to authenticate the landlord's claim and the tenant specifically denied the condition of the rental unit at the end of the tenancy.

I therefore find the landlord submitted insufficient evidence to support her claim for cleaning and I dismiss her claim for \$885.

2. Unpaid rent for April

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. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act. As the tenant has not submitted evidence under Sec. 33 of the Act that any alleged repairs were necessary for the health and safety reasons or that there were any emergency repairs which were urgent, she has not met this criteria.

I find that the tenant owed rent for the month of April 2014, under the terms of the tenancy agreement, and did not pay. I therefore grant the landlord a monetary award of \$1200 for unpaid rent.

3. Loss of rent revenue, May 1-15

Section 45(2) of the Act the 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.

In the case before me, I accept that the tenant provided insufficient notice that she was 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, September 30, 2014, subject to the landlord's requirement that they take reasonable measures to minimize their loss.

As there was no evidence from either party of a clear date upon which the tenant was to vacate the rental unit, I find it reasonable to conclude that the landlord took reasonable steps to minimize her loss by finding a new tenant by May 15, 2014.

I therefore award the landlord loss of rent revenue for May 1-15, 2014, in the amount of \$600, as claimed.

4. "*Rerent*" levy

As explained by the landlord, the provision in the tenancy agreement for a levy was intended to compensate her for her travels to and from the rental unit from her home base in another town. I find that the landlord has chosen to incur costs that cannot be assumed by the tenant. 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 term in the tenancy agreement requiring a levy to be enforceable and that the landlord is not entitled this charge, as it is not named by the *Residential Tenancy Act* as an allowable expense. I therefore dismiss the landlord's claim for \$600.

I allow the landlord recovery of her \$50 filing fee paid for this application.

Due to the above, I find the landlord is entitled to a total monetary award of \$1850, comprised of unpaid rent for April in the amount of \$1200, loss of rent revenue for May 1-15 for \$600, and the filing fee paid for this application of \$50.

Conclusion

The landlords' application for monetary compensation is granted in part.

At the landlords' request, I direct them to retain the tenant's security deposit of \$600 in partial satisfaction of their monetary award of \$1850 and I grant the landlords a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$1250, which is enclosed with the landlords' Decision.

Should the tenant 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 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: October 23, 2014

Residential Tenancy Branch

