



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MND, 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, unpaid rent, and alleged damage to the rental unit, and for recovery of the filing fee paid for this application.

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

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-The landlord did not file any documentary evidence in support of his application, which was filed on June 13, 2014, until October 15, 2014. The Rule 3.4 in effect at the time the landlord filed this application, required that the applicant, the landlord here, file all evidence available at the time with his application. Additionally, the landlord did not file this evidence within 5 business days of the hearing, as required by Rule 3.5, and I have therefore excluded the landlord's evidence from consideration, to Rule 11.5(2), as I determined that the acceptance would prejudice the other party, or result in a breach of the principles of natural justice.

The landlord was not prevented from testifying about or from his documentary and photographic evidence.

As to the tenant's evidence, the landlord said he had not received their evidence, as he works out of town and that his girlfriend did not receive a notice for registered mail. The tenant submitted that their evidence was sent by registered mail to the address listed by

the landlord on his application, on September 29, 2014. The tenant supplied a copy of the registered mail receipt and the tracking number. I accept the evidence of the tenants, as I find that they complied with their requirements for timely submission of evidence as required by the Rules, and that they should not be prejudiced by the landlord working out of town.

Preliminary matter#2-Although the landlord listed FB as the respondent/tenant, the others attending, other than the witness, submitted that they were also tenants during this tenancy. I have therefore included them as participants for the purpose of the hearing.

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

The landlord did not prepare a written tenancy agreement for this tenancy, but testified that the tenancy started on September 1, 2013, ended on May 31, 2014, monthly rent was \$700 for tenant FB, and \$450 for tenant PT, whose rent was paid directly by a government ministry. The landlord confirmed receiving a security deposit of \$550, and that he has not returned the security deposit.

The tenant submitted that monthly rent was \$650, and the landlord later concurred.

The landlord's monetary claim was \$550, comprised of unpaid utilities for February 13-March 12 for \$150.35, unpaid utilities for April 11-May 12 for \$72.76, estimated unpaid utilities for May 12-May 31 for \$50, unpaid rent for May in the amount of \$150, and damage to the house for \$126.89.

In support of his application, the landlord submitted the following:

Unpaid utilities-The landlord submitted that the tenants were responsible for one-half of the hydro costs, which was shared with the landlord as he lived in the lower portion of the residential property. The landlord submitted that he provided 2 photocopies of the bills as mentioned above and the tenants failed to pay all the hydro they owed. As to the estimated costs, the landlord submitted that the amount claimed was a reasonable estimate of the hydro costs for the remainder of the time from the last bill until the end of the tenancy.

Unpaid rent-The landlord submitted that the tenant FB paid only \$500 of the \$650 that was owed for May 2014, and therefore owed a rent deficiency of \$150.

Alleged damage-The landlord submitted that the tenants left holes in the drywall, as well as fleas. The landlord submitted further that the tenants failed to clean the rental unit at all prior to their departure, which required the landlord to clean the rental unit after the tenancy ended. The landlord submitted that his girlfriend spent two hours cleaning the bathroom.

In response to my question, the landlord confirmed that there was not a move-in or move-out condition inspection report.

Tenants' response-

Unpaid utilities- The tenant agreed that she owed \$150.35 for hydro costs, as she has already paid this amount and the landlord had not cashed her cheque. As to the other charges, the tenant submitted that she always paid the utilities costs, but did not agree that she owed the amount claimed by the landlord as she was never presented a bill for verification.

Unpaid rent-The tenant agreed she paid only \$500 for rent for May 2014, due to the lack of potable water in the rental unit, and the landlord's failure to supply clean water.

Alleged damage-The tenant denied any damage and that she hired two people to clean, as she was unable to due to her advanced pregnant state. The tenant submitted further that she attempted to have a walk-through of the rental unit at the end of the tenancy, but that the landlord refused, even though he was outside on a riding mower.

Tenant PL submitted that the house was not damaged in any way and that the rental unit was left spotless.

Analysis

In a claim for damage or loss under the Residential Tenancy Act, Residential Tenancy Branch Regulations or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements, as provided for in sections 7 and 67 of the Act:

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 party took reasonable measures to mitigate their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Unpaid utilities-

As the tenant agreed that the amount of \$150.35 for hydro for February 13-March 12 was owed, I grant the landlord a monetary award for this amount.

As to the landlord's claim for the remaining hydro costs, I find the landlord failed to submit any proof of these amounts, such as with a copy of the hydro bills. I note that the landlord failed to submit these copies even in his excluded evidence. I therefore find the landlord submitted insufficient evidence to support the remaining claim and dismiss those costs of \$72.76 and \$50.

*Unpaid rent-*As the parties agreed that monthly rent was \$650, I find the tenant owed this amount pursuant to their tenancy agreement for the monthly rent for May 2014. Under section 26 of the Act, a tenant is required to pay rent on the day rent is due and in full, unless a tenant has a legal right to do so.

As the tenant failed to provide evidence that she had such a legal right, I find that the tenant owed, and failed to pay the full amount of rent for May 2014, leaving a rent deficiency of \$150, as she confirmed paying \$500.

I therefore grant the landlord a monetary award of \$150 for a rent deficiency.

*Alleged damage-*A key component in establishing a claim for damage and cleaning is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Residential Tenancy Act deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me the landlord has failed to meet his obligation under of the Act of completing the inspections and there is also no independent record of the condition of the rental unit at the start and end of the tenancy.

I therefore find the landlord has submitted insufficient evidence to prove his claim that the tenants damaged or left unclean the rental unit and I dismiss his claim for \$126.89.

As the landlord's application was only partly successful, I decline to award him recovery of the filing fee of \$50.

Due to the above, I find the landlord is entitled to a total monetary award of \$300.35, comprised of the unpaid hydro for \$150.35 and the rent deficiency for May of \$150.

Conclusion

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

I direct the landlord to deduct the amount of his monetary award of \$300.35 from the tenant's security deposit of \$550 in satisfaction of his monetary award, and order that he return the remainder of the tenant's security deposit, or \$249.65, to the tenant forthwith.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the balance due from their security deposit in the amount of \$249.65, 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 monetary 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 22, 2014

Residential Tenancy Branch

