



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNDC MNSD FF

Preliminary Issues

At the outset of the hearing the Tenant stated that he wished to withdraw his application and requested leave to reapply if I did not disburse the security deposit in response to the Landlord's application.

Based on the submissions of the Tenant, I find the Tenants' application to be withdrawn, with liberty to reapply, pursuant to section 62 of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on August 12, 2014, to obtain a Monetary Order for: damage to the unit, site or property; for unpaid rent or utilities; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord and one Tenant, G.M., who submitted that he was representing both Tenants. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa.

The parties gave affirmed testimony and confirmed receipt of evidence served by the Landlord. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to a Monetary Order?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced in April 2013 and was scheduled to end on June 30, 2014. The Tenants were required to pay rent of \$1,750.00 on the first of each month and on April 2, 2013 the Tenants paid \$875.00 as the security deposit. The Tenant provided the Landlord his forwarding address on July 31, 2014 when the tenancy ended.

The Landlord testified that the parties have had several hearings and that in the most recent hearing they mutually agreed to end the tenancy on July 31, 2014 and an Order of Possession was granted to the Landlord. The Landlord stated that he had an Agent manage the tenancy at the beginning and he believes there was a move-in inspection conducted with his Agent and Tenant. The Landlord argued that he conducted a move out inspection with the Tenant during which the Landlord was allegedly bullied by the Tenant to complete the report indicating everything was in good order.

The Landlord now submits that the rental unit was left damaged and dirty and the Tenant did not pay for the last hydro bill. The Landlord filed an application seeking \$1,286.98 which is comprised of the following costs: \$13 for six lamps; \$75.00 for kitchen cabinet knobs; \$120.00 cleaning costs; \$200.00 yard maintenance; \$700.00 filling holes in the walls and painting; and \$178.98 for the final hydro bill.

The Tenant testified that the rental unit was left undamaged and cleaned at the end of the tenancy. He stated that the Landlord first attended the rental unit and conducted a walk through in the morning of July 31, 2014, at which time the Landlord commented about the picture holes that were in the walls. The Tenant argued that he stayed and filled the holes with putty and he acknowledged that he did not paint over the putty but argued that was not his responsibility to paint. The Landlord returned later that night and conducted the final inspection and was given the keys to the unit.

The Tenant argued that the Landlord failed to submit evidence to prove what the actual condition of the rental unit had been left in and he questioned why the Landlord did not submit a copy of the signed move out condition report form. The Tenant noted that he has not yet received a copy of that inspection report.

The Tenant confirmed that he did not pay the Landlord money for the final hydro bill because he had a verbal agreement with the Landlord that the Tenant would conduct repairs to the gutter. The repairs were completed so the Tenant argued he does not owe the Landlord anything for the last hydro bill.

In closing, the Landlord acknowledged that he did enter into a verbal agreement with the Tenant that would release the Tenant from paying the final hydro bill if the Tenant repaired the gutter. The Landlord argued that he now seeks to recover the cost of the hydro bill because the Tenant failed to issue the Landlord a bill for the repair work that was completed to the gutter.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this case the Landlord did not submit a copy of the move out condition inspection report form or photographs to prove the actual condition of the rental property at move out. The Tenant disputed the Landlord's claim and argued that the rental unit was left undamaged and clean at the end of the tenancy.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

Based on the above, I find that invoices are not in and of themselves proof of the condition of a property. Therefore, I find the Landlord submitted insufficient evidence to prove that the Tenant left the unit damaged and unclean at the end of the tenancy. Accordingly, I dismiss the Landlord's claims for cleaning and repairs, without leave to reapply.

The evidence supports that the parties entered into a verbal agreement whereby the Tenant would be released from payment of the final hydro bill in exchange for repairing the gutter. There is no evidence that would suggest that the Tenant was told he was required to submit a bill to the Landlord for the work performed or that the agreement would be null or void if the Tenant did not submit a bill.

Based on the above agreement, I find the Tenant was not required to pay the final hydro bill, and therefore I find the Landlord's claim of \$178.98 for hydro cost to be meritless and it is dismissed, without leave to reapply.

The Landlord has not succeeded with their application; therefore, I decline award recovery of the filing fee.

The Landlord's claim has been dismissed in its entirety; therefore, the Landlord is not entitled to retain the Tenant's security deposit of \$875.00. The Landlord filed his application within the required 15 days after the tenancy ended, in accordance with section 38 of the Act. Accordingly, I hereby order the Landlord to return the security deposit of \$875.00 plus \$0.00 interest to the Tenant forthwith, pursuant to section 62 of the Act.

Conclusion

I HEREBY DISMISS the Landlord's application, without leave to reapply.

In the event the Landlord does not comply with my above Order to return the security deposit to the Tenant forthwith, the Tenant may serve the Landlord the enclosed Monetary Order. If the Landlord does not comply with the Monetary Order the Tenant may file the Order with the Province of British Columbia Small Claims Court and enforce it as an Order of that Court.

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 14, 2014

Residential Tenancy Branch

