



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

TENANT: MNSD, MNDC, FF, O
LANDLORD: MNR, MND, MNSD, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenant.

The Landlords filed seeking a monetary order for compensation for damage to the unit site or property, for unpaid rent, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement, for the return of the Tenant's security deposit, to recover the filing fee for this proceeding and for other considerations.

Service of the hearing documents by the Landlords to the Tenant were done by registered mail on July 11, 2014 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlords were done by registered mail on July 7, 2014 in accordance with section 89 of the Act.

The Tenant and the Landlord confirmed that they had received the other party's hearing packages.

Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so how much?
2. Are the Landlords entitled to compensation for the damages and if so how much?
3. Is there unpaid rent and if so how much?
4. Are the Landlords entitled to unpaid rent and if so how much?
5. Are the Landlords entitled to retain the Tenant's security deposit?

Tenant:

1. Are there damages or losses to the Tenant and if so how much?
2. Is the Tenant entitled to compensation for loss or damage and if so how much?
3. Is the Tenant entitled to the return of the security deposit?

Background and Evidence

This tenancy was to start on June 1, 2014 in the tenancy agreement, but the parties agreed to the Tenant could moving into the rental unit on May 28, 2014. The Tenancy was a month to month tenancy. Rent was \$800.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$400.00 on May 2, 2014. There was a move in condition inspection completed on May 29, 2014 and a move out condition inspection completed by the parties but not signed by the Tenant on July 1, 2014. The Tenancy ended on June 30, 2014.

The Tenant said she gave her notice to end the tenancy in a letter to the Landlord dated May 31, 2014 as she knew when she moved into the rental unit the tenancy was not going to work for her. The Tenant said the Landlord had a number of rules about the tenancy that she was not aware of on move in and the Landlord wrote her threatening notes if she did something the Landlord did not like. The Tenant said an example of this was that the Landlord accused her of leaving the laundry door open and the Tenant said she did not. The Tenant said there were other notes and texts which made her feel uncomfortable and threatened so she gave her notice and moved out the rental unit.

The Tenant continued to say that she has made this application to recover her security deposit of \$400.00 as she believes there was no damage to the unit beyond normal wear and tear. As well the Tenant said she wants to recover her rent of \$800.00 for June, 2014 as she lived in fear of the Landlord for the time she was in the rental unit. The Tenant also said she would like to recover the filing fee for her application of \$50.00. The Tenant said her total claim is for \$1,250.00.

The Landlord said that in no way did she threaten the Tenant and she only gave the Tenant notes and texts to explain how the tenancy should work. The Landlord said the house was completely remodeled prior to the tenancy and she wanted the tenancy to work. The Landlord said she does not agree with the Tenant saying that she threatened her.

The Landlord continued to say that the Tenant agreed to pay \$78.00 in rent for the days she lived in the unit at the end of May, 2014. The Landlord said the tenancy had to start when the Tenant moved in to validate her insurance. As a result the Landlord is claiming \$78.00 in unpaid rent. The Landlord continued to say that the Tenant damaged the rental unit and she would like to retain the Tenant's security deposit of \$400.00 to cover the unpaid rent, the damage to the unit and the filing fee of \$50.00. The Landlord said the damage to the unit was scratches to the engineered hard wood flooring and marks on the walls that had to be painted. The Landlord submitted photographs to support her claims. The Landlord also thought the Tenant had smoked in the unit and the unit may need an ozoniser to freshen up the rental unit.

The Tenant said she does not smoke and did not have any smoking in the unit.

The Tenant said she left the unit clean and she did not cause any damage to the unit beyond normal wear and tear. The Tenant said the flooring is laminate not engineered hard wood flooring and the scratches were scuffs from shoes. As well the Tenant said the marks on the wall were from her TV touching the wall. The Tenant said the Landlord was angry at her during the move out condition inspection and the damages she is claiming are just normal wear and tear.

The Tenant agreed that she owed the Landlord \$78.00 in unpaid rent.

The Landlord said in closing that she was sorry the tenancy ended this way, but there is damage to the rental unit and she is requesting to retain the Tenant's security deposit as compensation for the damage, the unpaid rent and to recover the filing fee of \$50.00.

The Tenant said in closing that she was shocked this happened to her and she did not like the way she was treated by the Landlord. As a result the Tenant said she should be given compensation as per her application.

Analysis

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

As both parties agree that \$78.00 of rent is unpaid for the end of May, 2014, I award the Landlord \$78.00 of unpaid rent.

With respect to the Tenant's claim for the return of the rent of \$800.00 for June, 2014, it was agreed by both parties that the Tenant did live in the rental unit; therefore the Landlord met the obligations of providing the rental unit as per the tenancy agreement. The Tenant is requesting \$800.00 compensation for loss of quiet enjoyment. The Act says a claim for loss of enjoyment must be **serious and significant** in order to be successful in a monetary claim. The Tenant said the Landlord sent her notes and text, but did not physically threaten her; therefore I find the level of **seriousness** of the actions of the Landlords have not reached the level of **seriousness** required to be successful in recovering compensation. Consequently, I dismiss the Tenant's claim for \$800.00 of rent recovery for loss of quiet enjoyment of the rental unit.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

With respect to the Landlords' monetary claim the Landlord has not proven a monetary loss exists as there is no evidence that proves money was sent to repair any of the claims the Landlord has made for damages. A monetary claim must be verified by providing receipts for the claims that the Landlord has made. As well Section 32 (4) says that a Tenant is not responsible to repair normal wear and tear. I have reviewed the photographs submitted by the Landlord and I find the marks on the floor and walls are normal wear and tear of the tenancy. Consequently I dismiss the Landlord's claim for damage to the rental unit.

As a result I order the Landlord to retain \$78.00 of the Tenant's security deposit and return \$318.00 to the Tenant forthwith. To support this decision I have issued a monetary order to the Tenant for \$318.00.

As both the Tenant and the Landlords have only been partially successful in this matter, I order both parties to bear the cost of the filing fee of \$50.00 that they have already paid.

Conclusion

A Monetary Order in the amount of \$318.00 has been issued to the Tenant. A copy of the Order must be served on the Landlords: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: November 26, 2014

Residential Tenancy Branch

