



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNSD, MNDC, FF
For the landlord: MNSD, MNDC, MNR, FF

Introduction

This was the reconvened hearing dealing with the parties' respective applications for dispute resolution under the Residential Tenancy Act (the "Act").

The tenant applied for a monetary order for a return of his 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 applied for authority to retain the tenant's security deposit, a monetary order for money owed or compensation for damage or loss and unpaid rent, and for recovery of the filing fee paid for this application.

This hearing began on September 9, 2014, was attended by the tenant and the landlord and dealt only with the tenant's application and the landlord's response to the tenant's application.

The parties were informed at the original hearing that the hearing would be adjourned in order to consider the issues contained in the landlord's application. The parties were advised that during the period of adjournment, no new evidence would be accepted.

This reconvened hearing, again attended by the tenant and the landlord, proceeded on landlord's application and the tenant's response.

At both hearings, the 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, to respond to the other's evidence, and make submissions to me.

I have reviewed and considered all the significant amount of 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 has listed as respondent and tenant a person named on the written tenancy agreement, but not signed by that person. I therefore decline to list that person, AL, as a respondent as to the landlord's application.

Issue(s) to be Decided

1. Is the tenant entitled to monetary compensation and to recover the filing fee?

2. Is the landlord entitled to monetary compensation and to recover the filing fee?

Background and Evidence

This month-to-month tenancy, according to the written tenancy agreement, started on April 15, 2014. Although the tenancy agreement listed monthly rent as \$1500, the tenant disputed that, submitting that the monthly rent was \$1450, due to a monthly utility credit of \$50. The tenant submitted that he paid a security deposit of \$725 and the landlord and written tenancy agreement states that the security deposit was \$750, which the landlord has retained. I was not provided proof of payment, noting the exact amount.

The rental unit is located on several acres of land, 6 according to the landlord.

The tenant submitted further that he began moving some personal property into the rental unit before April 15, 2014, and began removing his personal property out of the rental unit on April 21, 2014.

Tenant's application-

The tenant's monetary claim is \$1640.80, comprised of a return of the security deposit of \$725, return of a partial month's rent of \$725, and expenses relating to mileage, fuel, and moving.

The tenant's relevant documentary evidence included, but was not limited to, email communication between the parties, some with the tenant's handwritten notations, a listing of what the tenant stated were verbal agreements made between the parties, a listing of the tenant's concerns for health and safety, a listing of what the tenant said was changes to written and verbal agreements, other concerns and summary of the dispute, the tenant's written notice to end the tenancy, the written tenancy agreement, and copies of photographs of the rental unit.

In support of his application, the tenant submitted he was unable to complete the terms of the tenancy due to concerns for their health and safety. In particular, the tenant submitted he noticed mould both visually and by smell. The tenant submitted further he suspected that marijuana was previously grown in and around the residential property, due to the presence of an irrigation line running underground through the garden and greenhouse and perlite in the garden and greenhouse. Additionally, the tenant submitted that he discovered gloves in the kitchen closet containing resin from marijuana residue. The tenant submitted further that when making an inquiry to Fortis Electricity to have the power bill put in his name, he was informed that the previous tenants consumed a large amount of electricity, further contributing to his concern that the rental unit was used to grow marijuana.

The tenant submitted further that other concerns he had were the lack of repairs as promised by the landlord and in the written tenancy agreement, according to the tenant. In particular, some items were cleaning, painting, removal of the landlord's property, and repairs, such as missing toilet tank, running water, carpet cleaning and a water shut-off valve.

The tenant submitted further that the landlord failed to timely address these concerns, buy the paint, meet for an inspection, and left for an out-of-town conference, all of which made the tenant question whether or not the landlord would make good on the verbal and written agreements. Due to these concerns, the tenant submitted he had no choice other than to vacate

the rental unit, which he did by April 21, 2014, and therefore, he was entitled to a return of the rent paid for April 2014, a return of his security deposit, and costs of moving, as the rental unit was not in a livable condition.

Landlord's response-

The landlord submitted there was no reason for the tenants to be concerned for their health and safety, and that it was the tenants who wanted to paint the rental unit. The landlord submitted further that he agreed to reimburse the tenants for the paint, up to \$750, but due to the tenants' lack of response, he was never able to meet with them to finalize the transaction.

The landlord denied that there were any major repair issues, only very minor work and patch jobs, which would not take very long to repair. The landlord submitted further that he had arranged for a contractor to attend the rental unit the day before the tenancy officially commenced, but that the tenant had removed the key kept on the property and the contractor was not able to go in at that time. The landlord submitted further that he was informed by the tenant's partner, who was listed as a co-tenant, that they were too busy to paint, and that they would contact him later.

The landlord submitted that he finished the counter repair, which was done with a stripping agent prior to the start date of the tenancy, possibly being the smell the tenant thought was marijuana, and could not repair the water line, possibly due to frost; however, none of these issues impacted the use of the home, according to the landlord.

The landlord submitted that he tried without success to meet with the tenant to discuss the issues, but the tenant would not, until suddenly, on a holiday weekend, the tenant demanded to have all the work done.

The landlord denied that marijuana was grown on the property, as he used to live there, and that the water lines were there for gardening and landscaping. The landlord submitted further that the perlite was used for gardening and said he did not know anything about a glove on the premises. The landlord questioned where the glove was found or located and whether or not the police attended the residential property, as the tenant would not produce a police report.

The landlord denied there were mould issues in the rental unit or that the parties had any verbal agreements, stating that the only agreement was the written tenancy agreement, which did not mention repair requests.

Landlord's application-

The landlord's monetary claim is \$1340, comprised of loss of rent revenue for May 1-15, 2014, advertising for \$50, and time spent for re-renting the rental unit for \$540.

The landlord's relevant documentary evidence included, but was not limited to, email communication between the parties, a receipt for house cleaning, and a written tenancy agreement.

In support of his application, the landlord submitted that his awareness that the tenants were vacating was a gradual process, and on April 19, 2014, he offered the tenants a chance to vacate without penalty, but received no response from the tenant. The landlord submitted

further that as he did not receive a written notice from the tenant until April 28, 2014, that he was vacating, he was not able to rent the property for May 1, 2014; therefore, he was entitled to his loss of rent revenue for the first part of May as he was able to find a new tenant for May 15, 2014, according to the landlord.

As to the monthly rent, the landlord submitted that this amount of \$1500, and that the tenant, as listed in the written tenancy agreement, would receive a \$50 credit for electrical usage for the cottage after the power bill was paid.

The landlord reiterated that the tenant had no valid reason for vacating.

The landlord submitted further that he should be given costs to re-rent, as the tenant vacated early without a proper notice, and that he spent time and money in traveling back and forth to the rental unit.

Tenant's response-

The tenant reiterated that he was entitled to vacate the rental unit as their needs were not being met and that the repairs were not being timely made. The tenant said they decided on April 19 to vacate.

The tenant reiterated that the landlord failed to abide by their verbal agreement and that the monthly rent was \$1450.

Analysis

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, both parties in this case, has to prove, with a balance of probabilities, four different elements:

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 claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

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

Tenant's application-

Section 32 of the Act requires a landlord to provide and maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In this case, I find the tenant submitted insufficient evidence that the rental unit was not livable or met the health, safety and housing standards. I find the tenant failed to prove that marijuana was grown on the residential property or that there was mould present leading to a health concern. I would expect the tenant to produce an expert's report confirming the presence of toxic mould harmful to the tenant or marijuana being present or having been grown on the residential property. The tenant mentioned a police assessment, but failed to produce this

proof. I do not find that the presence of water lines on the land or perlite was proof of marijuana grown, only of the tenant's speculation as to their purpose.

I further find that the tenant submitted insufficient evidence the repair issues substantiated that the rental unit unlivable or cause the rental unit to lack compliance with the health, safety or housing standards. Emails do not sufficiently support that repairs were necessary and I find that disputed verbal agreements are not enforceable by their own nature as the landlord disputed that there was one or any. The only written agreement was the tenancy agreement, and there was no mention made of repairs to be completed by the landlord.

I therefore find the tenant submitted insufficient evidence that the landlord has violated the Act, and I therefore dismiss the tenant's application for monetary compensation, without leave to reapply.

Landlord's application-

As to the issue of loss of revenue, section 45 (1) of the Act requires a tenant to give written notice to end the tenancy one clear calendar month before the next rent payment is due.

In the case before me, I find the landlord submitted sufficient evidence that the tenant failed to give a written notice until April 28, 2014, that he was vacating by April 30, 2014. I also accept that the landlord took reasonable steps to minimize his loss, as he had secured a new tenant for May 15, 2014.

I therefore find the tenant's insufficient notice caused the landlord to suffer a loss of rent revenue for the month of May 1-15, 2014. I also find that the monthly rent was \$1500, as per the written tenancy agreement and that the landlord is therefore entitled to a loss of rent revenue for \$750. I have made the determination that monthly rent was \$1500, as listed in the written tenancy agreement, as there was no proof submitted that the tenant had paid an electrical bill, in order to be given credit of \$50 towards the monthly rent.

As to the landlord's request for expenses in re-renting the rental unit, 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 landlord is not entitled to travel costs, as they are costs which are not named by the *Residential Tenancy Act*. I therefore dismiss the landlord's claim for \$50 for advertising and \$540 for travel and interview expenses, without leave to reapply.

Due to the above, I find the landlord is entitled to a total monetary award of \$800, comprised of \$750 for loss of rent revenue for May 1-15, 2014 and the filing fee paid for this application of \$50.

Conclusion

The tenant's application is dismissed.

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

At the landlord's request, I direct him to retain the tenant's security deposit of \$750 in partial satisfaction of his monetary award of \$800 and I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$50, which I have enclosed with the landlord's 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: November 10, 2014

Residential Tenancy Branch

