



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MND, MNSD, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary award and an order to retain the security deposit in partial satisfaction of the monetary claim. The hearing was conducted by conference call. The landlord called in and participated in the hearing. The tenant did not attend, although he was served with the application and Notice of Hearing sent to his forwarding address by registered mail on August 1, 2014.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary award, or upon some other basis?

Background and Evidence

The rental unit is a strata title townhouse apartment in Vancouver. The tenancy began on June 1, 2013 for a fixed term ending August 31, 2014. The monthly rent was \$2,400.00, payable on the first of each month. The tenants paid a security deposit of \$1,200.00. The tenancy did not include parking. The initial tenancy agreement was made between the landlord and the respondent in this proceeding and P.C. as co-tenant. P.C. moved out of the rental unit. In January, 2014 the landlord entered into a new agreement with the respondent and Mr. R.B. as co-tenant. The new tenancy agreement was an amended form of the original agreement and it too provided for a fixed term ending August 31, 2014.

On February 1, 2014 the respondent tenant notified the landlord that he intended to break the lease and move out at the end of February. The respondent did move out on February 28, 2014. The co-tenant paid \$1,200.00 rent for March and also moved out. The landlord conducted a move-out inspection with the respondent. The landlord said

that the respondent acknowledged specific damage to the rental unit and agreed to forfeit the security deposit because the lease was broken. The landlord referred me to the early termination provision in the tenancy agreement which provides for an early termination fee of 50% of one month's rent said to be reimbursement to the landlord for placement fee charged by its agent for finding a new tenant. The landlord did not make a claim in his application for an early termination fee and he did not provide evidence that he was charged an agent's placement fee. In the copy of the condition inspection report submitted by the landlord, the respondent did not sign the form in the space provided on the form to signify that he agreed to the deduction or forfeiture of his entire deposit.

The landlord testified that he succeeded in finding a new tenant to rent the unit commencing April 1, 2014 at a monthly rent of \$2,400.00, but he was only able to do so by including a parking space as part of the monthly rent. In order to provide the parking space to the new tenant, he had to withdraw it from a separate rental and forego rental revenue of \$125.00 per month realized from the parking space.

The tenant failed to pay the electrical bills and the power was turned off by BC Hydro. The landlord had to pay the tenant's outstanding bill and pay a reconnection fee.

The landlord testified that the tenant damaged the hardwood floor and created an indelible stain in the carpet. He hired a professional to make a cosmetic repair to the hardwood floor. A professional carpet cleaner was unable to remove the carpet stain. The landlord submitted a photo of the carpet. He said that a large and unsightly stain remains and it will be necessary to replace a portion of the carpet. The landlord obtained quotes for the carpet replacement. The carpet was not changed before the new tenant moved into the unit. He testified that it will cost \$700.00 to replace the carpet in one room of the rental unit with an average grade of carpet. The landlord said that the rental property was constructed in 2006 and the carpet was installed at that time.

In the application for dispute resolution the landlord claimed payment of the following amounts:

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|---|------------|
| • Unpaid rent for March: | \$1,200.00 |
| • Loss of parking revenue for remainder of term | \$625.00 |
| • BC Hydro charges + reconnection fee: | \$366.78 |
| • Carpet cleaning charges: | \$175.00 |
| • Hardwood floor repair: | \$157.50 |

- Estimated cost of carpet replacement: \$700.00
- Dump fees for removal of abandoned items: \$34.00
- Key fob Replacement: \$65.00
- Filing fees X 2 \$100.00

Analysis

The tenant breached the fixed term tenancy agreement by moving out before the end of the term. The landlord mitigated his damages by finding a new tenant to occupy the unit commencing April 1, 2014. The landlord was not paid the full rent for the month of March and he is entitled to the sum of \$1,200.00 as unpaid rent for March. The landlord lost revenue of \$625.00 because he had to include parking as a term of the new tenancy. I find that the landlord is entitled to an award of \$625.00 as lost revenue. The tenants were responsible for utilities and I allow the claim for hydro charges in the amount of \$366.78. The hardwood floor was damaged by the tenants and I allow the amount of \$157.50 claimed for the repair. With respect to the carpet, I accept the landlord's testimony that it was stained by the tenants and that the stain could not be removed by professional cleaning. I find that it was reasonable to make the effort to clean before determining that the carpet should be replaced. The Residential Tenancy Policy Guideline with respect to the useful life of building elements suggest a useful life for carpet of 10 years; The evidence, including the condition inspection report shows that the carpet was in good condition at the start of the tenancy. I consider that the expected life of this carpet is understated by the policy guideline, but I do find that the landlord should not be reimbursed for the full amount of the carpet replacement. To take into account a depreciation factor for the age of the carpet, I award the landlord the sum of \$500.00 for the cost of carpet replacement.

The landlord is entitled to the amounts claimed for dump fees and key fob replacement.

The landlord has not claimed payment of an early termination fee and he has not provided evidence to show that he incurred any agency fees. The landlord submitted that the tenant agreed to the forfeiture of the security deposit on account of this fee. I have looked at the condition inspection report and I find that the tenant did not sign the condition inspection report to acknowledge forfeiture of the deposit. The landlord claimed to retain the deposit in his application and I find that it must be applied as a set off against the landlord's claims in this proceeding.

Conclusion

I have awarded the landlord the total amount of \$3,123.28 as set out above. The landlord is entitled to recover the \$50.00 filing fee for this application. There was an earlier proceeding; no one attended the hearing of that proceeding and it was dismissed with leave to reapply. I do not have the authority to award a filing fee for any earlier proceeding and the landlord's claim for the recovery of the filing fee for that proceeding is denied.

The total award to the landlord is the sum of \$3,173.28. I order that the landlord retain the security deposit of \$1,200.00 in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$1,973.28. This order may be registered in the Small Claims Court and enforced 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: January 23, 2015

Residential Tenancy Branch

