



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNSD, FF, O

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damage; for a monetary Order for unpaid rent; to keep all or part of the security deposit; to recover the fee for filing this Application for Dispute Resolution; and for "other".

An interim decision regarding this matter was rendered on March 03, 2015. In that decision I determined that the Application for Dispute Resolution and the Notice of Hearing were sufficiently served to the Tenant and the hearing should be adjourned to provide the Tenant with an opportunity to respond to the Landlord's claims.

In my interim decision that Landlord was advised that any evidence the Landlord wishes to rely upon must be submitted to the Residential Tenancy Branch and served to the Tenant by March 21, 2015.

On March 19, 2015 and March 20, 2015 the Landlord submitted documents and photographs to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Landlord stated that these documents were placed through the Tenant's mail slot on March 20, 2015. The Tenant stated that she received this evidence on March 25, 2015. In the absence of evidence that clearly establishes the Landlord's documents were not served to the Tenant by March 21, 2015, I accept the documents/photographs as evidence for these proceedings. I find that even if the evidence was not received until March 25, 2015, the delay does not place the Tenant at a significant disadvantage.

In my interim decision that Tenant was advised that any evidence the Tenant wishes to rely upon must be submitted to the Residential Tenancy Branch and served to the Landlord by March 30, 2015.

On March 18, 2015 the Tenant submitted documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents were personally served to the Landlord on March 17, 2015. The

Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On March 23, 2015 the Tenant submitted additional documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents were placed in the Landlord's mail box on March 23, 2015. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

Both parties were represented at both hearings. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and unpaid rent?
Is the Landlord entitled to retain all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began in June of 2014; that the Tenant agreed to pay monthly rent of \$895.00 by the first day of each month; and that the Tenant paid a security deposit of \$450.00.

The first three pages of the tenancy agreement were submitted in evidence, which incorrectly identifies the Tenant as the Landlord, and does not identify the Landlord. The Landlord and the Tenant agree that they signed this tenancy agreement, although the signatory page was not submitted in evidence. The parties agree that the tenancy agreement indicates the electricity and water are not included in the rent.

The Landlord stated that the Tenant was required to pay for water and electricity used during the tenancy. The Tenant stated that she was required to pay for electricity used during the tenancy, but she did not agree to pay for water.

The Landlord and the Tenant agree a condition inspection report was completed at the beginning of this tenancy. The Landlord stated that the Tenant was too "busy" to sign the report and the Tenant stated that she refused to sign the report because she did not agree with the content of the report.

The Landlord and the Tenant agree a condition inspection report was not completed at the end of this tenancy.

The Landlord stated that he posted a Ten Day Notice to End Tenancy on the door of the rental unit on July 07, 2014. The Tenant stated that she located the Notice on the door sometime around July 07, 2014. The parties agree that the Notice to End Tenancy declared that the Tenant must vacate the rental unit by July 17, 2014.

The Tenant stated that she vacated the rental unit on July 19, 2014, although she did not remove all of her personal possessions. She stated that she sent the Landlord a text message on July 19, 2014, in which she informed him the keys had been left inside the rental unit.

The Landlord stated that he went to the rental unit on August 02, 2014 and determined that the Tenant still had a significant amount of property in the rental unit. He stated that he returned on August 09, 2014 and determined that most of her property had been removed from the unit, at which time he concluded that she had vacated the rental unit. He stated that he located the keys inside the rental unit on August 09, 2014.

The Tenant submitted a receipt from a storage company, dated July 19, 2014. She contends that this shows she had moved out of the rental unit by that date.

The Tenant stated that she was not living in the rental unit in June due to problems with the electrical system. She stated that she did not have authority from the Residential Tenancy Branch to withhold rent and she did not make any emergency repairs during her short tenancy.

The Tenant submitted a letter from the mother of a male the Tenant was dating in June of 2014. In the letter the author declared that the Tenant moved in with her "approx. July 15, 2014".

The Tenant stated that on June 29, 2014 she personally gave the Landlord a letter, dated June 10, 2014, in which she informed him of deficiencies with the rental unit. This letter was submitted in evidence. The Landlord stated that he did not receive this letter until it was served to him as evidence for these proceedings.

Neither the Landlord nor the Tenant were permitted to give evidence regarding alleged deficiencies with the rental unit, as the alleged deficiencies are not directly relevant to the issues in dispute at these proceedings. The parties were advised that the Tenant has the right to file an Application for Dispute Resolution in which she seeks compensation for deficiencies with the rental unit.

The Landlord and the Tenant agree that no rent was paid for July or August of 2014. The Landlord is seeking compensation for unpaid rent for these months, in the amount of \$1,790.00.

The Landlord has claimed \$220.00 in unpaid utilities. At the hearing the Landlord stated that he "thinks" the claim is for hydro charges. The Landlord did not submit any utility bills to corroborate this claim.

The Landlord has claimed compensation for cleaning the rental unit, in the amount of \$300.00. The Landlord submitted photographs that show the rental unit required

cleaning at the end of the tenancy. The Tenant acknowledged that the photographs fairly represented the condition of the rental unit at the end of the tenancy.

The Landlord stated that he paid “around” \$200.00 to clean the rental unit, although he did not submit a receipt for that expense.

Analysis

Section 26(1) of the *Residential Tenancy Act (Act)* requires a tenant to 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.

On the basis of the undisputed evidence, I find that the Tenant did not pay the \$895.00 in rent that was due on July 01, 2014. As she was required to pay rent when it was due, pursuant to section 26(1) of the *Act*, I find that she must pay \$895.00 for rent from July.

In determining that rent must be paid for July of 2014 I was influenced, in part, by the Tenant’s testimony that she did not have authority from the Residential Tenancy Branch to withhold rent for July.

Section 33(7) authorizes a tenant to withhold rent, in certain circumstances, if the tenant has made emergency repairs. As the Tenant acknowledged that she did not make any emergency repairs during this tenancy, I am unable to conclude that the Tenant had the right to withhold rent in accordance with section 33(7) of the *Act*.

Section 45(3) of the *Act* stipulates that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected that situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

In determining this matter I have placed no weight on the letter dated June 29, 2014, in which the Tenant listed deficiencies with the rental unit. Even if I were to accept that the Landlord received this letter and that the listed deficiencies were a breach of a material term of the tenancy, I would conclude that the Tenant was still obligated to pay rent on July 01, 2014.

My determination that rent was due on July 01, 2014 regardless of the letter dated June 29, 2014 was based, in part, on my conclusion that the Tenant did not wait a reasonable period between allegedly serving the letter and opting not to pay her rent on July 01, 2014.

My determination that rent was due on July 01, 2014 regardless of the letter dated June 29, 2014 was based, in large part, on the undisputed evidence that the Tenant did not serve the Landlord with written notice to end the tenancy after this letter was served. As

there is no evidence that either party served notice to end this tenancy prior to July 01, 2014, I find that rent was due on July 01, 2014.

On the basis of the undisputed evidence, I find that this tenancy ended on the basis of the Ten Day Notice to End Tenancy that the Landlord stated was posted on the door of the rental unit on July 07, 2014. As the Tenant is not certain that she located the Notice on July 07, 2014, I find that she is deemed to have received it on July 10, 2014, pursuant to section 90 of the *Act*.

Section 46(1) of the *Act* stipulates that a Ten Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on July 10, 2014 I find that the earliest effective date of the Notice was July 20, 2014.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was July 20, 2014.

When making a claim for damages under a tenancy agreement or the *Act* the party making the claim has the burden of proving their claim, which is the Landlord in these circumstances. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant did not vacate the rental unit by July 19, 2014. In reaching this conclusion I was influenced by the absence of evidence that corroborates the Landlord's testimony that the Tenant had not vacated the rental unit on August 02, 2014, which was based on his observations of the rental unit on that date

In determining there was insufficient evidence to conclude that the Tenant had not vacated the rental unit by July 19, 2014, I was influenced, in part, by the receipt from the storage company dated July 19, 2014. I was also influenced by the letter from the mother of a male the Tenant was dating in June of 2014, in which the mother declared that the Tenant moved in with her "approx. July 15, 2014". I find both of these exhibits corroborate the Tenant's testimony that she had vacated the rental unit by July 19, 2014.

As the Landlord has failed to establish that the Tenant was living in the rental unit in August of 2014, I dismiss his claim for rent for that month.

On the basis of the tenancy agreement submitted in evidence, I find that the Tenant was required to pay for water and hydro used during the tenancy. The agreement corroborates the testimony of the Landlord, who stated that the Tenant was required to

pay for water and hydro, and refutes the testimony of the Tenant, who stated that she was not required to pay for water.

In addition to establishing that the Tenant was required to pay for hydro and water used during the tenancy, the Landlord also has an obligation to submit some evidence, such as a bill, to establish the amount of those utility charges. As no bills or documentary evidence was submitted, I find that the Landlord failed to establish the true cost of utilities used during the tenancy. I therefore dismiss the Landlord's claim for compensation unpaid utilities

On the basis of the photographs submitted in evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to leave the rental unit in reasonably clean condition. I find that the Landlord failed to establish the true cost of cleaning the unit. In reaching this conclusion, I was strongly influenced by the absence of a receipt or other documentary evidence that establishes the amount that was paid to clean the rental unit. I therefore dismiss the Landlord's claim for compensation for cleaning.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$945.00, which is comprised of \$895.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the security deposit of \$450.00 in partial satisfaction of this claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$495.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia 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: April 10, 2015

Residential Tenancy Branch

