



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

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

For the tenant: MNDC, MNSD, FF

Introduction

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

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

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.

This hearing began on March 6, 2015, was attended by the landlord, his father as agent/witness, the tenant, and his advocate, and dealt only with the landlord's evidence in support of his application, due to time constraints.

An Interim Decision which was entered on March 7, 2015, should be read in conjunction with this Decision and is incorporated herein by reference.

The parties were informed at the original hearing that the hearing would be adjourned in order to allow the tenant to provide responsive evidence to the landlord's application and to consider the tenant's application.

During the period of adjournment, the landlord was allowed to submit rebuttal evidence to the tenant's application and evidence, and the tenant was advised that I would not accept any further documentary evidence from him, for the reasons contained in the Interim Decision.

This hearing proceeded on the balance of the parties' original applications for dispute resolution.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

Preliminary matter-When reviewing the evidence at the beginning of the hearing, and in this case, as the matter at issue was the landlord's digital evidence, I inquired of the tenant and his advocate if they were able to access the CD submitted by the landlord. The tenant, through his advocate, stated that they were not. Under section 3.10 of the Dispute Resolution Rules of Procedure (Rules), the party submitting digital evidence must ask the other party before the hearing if that party was able to gain access to the digital evidence. In this case, the tenant denied being able to access the digital evidence and I have no evidence that the landlord made inquiry of the tenant as to whether or not they were able to gain access to the digital evidence. Therefore I have excluded the landlord's digital evidence, and proceeded on his documentary evidence and the oral evidence of the parties taken at the hearing.

Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit, further monetary compensation, and to recovery of the filing fee paid for this application?

Is the tenant entitled to a return of his security deposit, further monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The written tenancy agreement shows that this tenancy began on December 1, 2013, for a fixed term to end on November 30, 2014 and with monthly rent of \$1625.00. The undisputed evidence was that the tenancy ended on or about July 31, 2014. The landlord submitted that the tenant paid a security deposit of \$815.00, which the landlord still retains. The tenant, through his advocate, submitted that he paid \$1500.00 as a security deposit.

Landlord's application-

The landlord's monetary claim is as follows:

Unpaid rent for last month of tenancy	\$815.00
Carpet cleaning	\$308.33
General cleaning	\$367.50
Hydro costs	\$88.38

In support of his application, the landlord submitted as follows:

Unpaid rent-The landlord submitted that the tenant failed to pay rent for the month of July, and when he asked the tenant for payment, the tenant paid only a portion of the monthly rent obligation, or \$810.00, leaving a rent deficiency of \$815.00.

Carpet cleaning-The landlord submitted that he, his agent here, and the tenant attended the move-out inspection, at which time it was noted that the carpets had not been cleaned. The written tenancy agreement provided by the landlord contains a clause that if the carpet was professionally cleaned at the beginning of the tenancy, the tenant was required to pay for a professional cleaning. The landlord submitted a copy of a receipt from a carpet cleaning company and the move-in condition inspection report showing the carpet was professionally cleaned.

General cleaning-The landlord submitted that the tenant failed to clean the rental unit prior to moving out, as noted in the condition inspection report, requiring the landlord to incur costs in hiring a cleaning company, as shown by his submitted receipt. Among some of the items noted by the landlord were writings on the walls, dirty freezer compartments, food left in the refrigerator, toilets brown, carpets stained, and garbage left in the rental unit. The landlord submitted further that the rental unit should be in the same state as when the tenancy began.

Hydro costs-The landlord submitted that the tenant was responsible for his shared portion of the hydro bill, as the rental unit is the upper half and the landlord has other tenants in the lower suite. Into evidence the landlord submitted a copy of the hydro bill noting a 60/40% split, with the tenant being responsible for the 60%.

Tenant's response-

As a general response, the tenant, through his advocate, submitted that the tenant was shown one rental unit, the address for which was on the written tenancy agreement, but shortly after that, the tenant was told he had to move next door and the tenancy agreement was changed.

The tenant submitted further that when he arrived at the rental unit to pay the security deposit of \$812.50, the landlord asked to see the tenant's copy of the tenancy agreement, at which time the landlord changed the address and the amount of the security deposit to \$1500.00. The tenant submitted his written tenancy agreement into evidence.

The tenant submitted further that he was led to believe that he was renting a suite with no one living in the lower unit; however, approximately two and a half months later, tenants moved into the lower suite. The tenant submitted that there was never an agreement to a percentage of the hydro bill.

The tenant submitted further that there was not a final condition inspection of the rental unit and that he did not sign or receive a copy of the condition inspection report which was submitted into evidence by the landlord.

As to the cleaning, the tenant submitted that he offered to clean the rental unit, but that the landlord told him he, the landlord, would take care of the cleaning.

Landlord's rebuttal-

The landlord submitted that the residential property was a 4-plex building, with all units being taken back to the studs as they were newly renovated. The tenant viewed 1 unit, which was the address originally listed on the tenancy agreement, but when coming back to pay the security deposit, he chose the other unit, which was a mirror image of the first one, according to the landlord. The landlord submitted that the tenant had his pick of the rental units, as he was the first tenant.

As to the security deposit, the landlord submitted that the tenant was to pay \$812.50, half the monthly rent of \$1625.00; however, when the tenant arrived to pay, he did not have the correct sum and instead had \$815.00, which was accepted as a security deposit. The security deposit listed in the tenancy agreement was then written over with the figure of \$15.00 after the 8, separated by a period between the 15 and 00; the landlord submitted that he did not collect a \$1500.00 security deposit.

The landlord submitted that the tenant began discussing as early as July 16, 2014, that he would be moving out and that he would clean the rental unit. The landlord submitted further that the tenant did attend the move-out inspection and apologized for not cleaning, assuring the landlord that he would pay for cleaning costs, the final month's rent, and the hydro costs. Despite these requests, the tenant did not pay any of these costs. The landlord submitted copies of emails between the parties to support his rebuttal.

Tenant's application-

Although the tenant listed in his application that his monetary claim was \$25,000.00, the tenant's evidence and submissions show that the tenant's actual monetary claim is \$35,250.69 plus hydro already paid, as submitted in his attached documentary evidence.

In response to my question, the tenant's advocate stated that he was told by an agent at the RTB to put \$25,000.00 as his claim, although his claim exceeded that amount. The tenant's advocate presented that he was misinformed by the Agent.

Analysis

I have reviewed all 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 admissible evidence regarding the facts and issues in this decision.

Landlord's application-

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that occurs as a result of their actions or neglect, so long as the applicant verifies the loss, as required under section 67. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

Unpaid rent, July 2014-

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. In this case, I do not find that the tenant presented any evidence to support that he was permitted to withhold the rent, and that the tenant owed rent for the month of July 2014 under the terms of the tenancy agreement, and did not pay the full amount.

I find the landlord submitted sufficient evidence that the tenant paid only a portion, or \$810.00, I find the landlord is entitled to a monetary award for the balance, or \$815.00.

Carpet cleaning-

A review of the written tenancy agreement shows that the tenant is required to pay for a professional clean at the end of the tenancy if the carpets were professionally cleaned at the beginning of the tenancy. In this case, as the tenant signed the move-in portion of the condition inspection report, noting that the carpets were professionally cleaned, and there was no evidence submitted from the tenant showing that the carpet was cleaned, I find the landlord submitted sufficient evidence to support his claim for carpet cleaning as reflected in the receipt. I therefore find the landlord is entitled to a monetary award of \$308.33.

Cleaning-

I find a key component in establishing a claim for damage is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Act deal with the landlord and tenant obligations in conducting and completing the condition inspections.

In this case, I find the document submitted and relied upon by the landlord to serve as a condition inspection report does not meet all the requirements of the Act and Residential Tenancy Regulation. Section 20 of the Regulations requires that the condition inspection reports contain specific information and content and be in a specific format. Standard forms are available to landlords on the Residential Tenancy Branch ("RTB") website. For instance, among other requirements, the condition inspection report must contain the full address for the rental unit, the correct legal name of the landlord, their address for service, and an appropriate space for the tenant to indicate agreement or disagreement with the landlord's assessment of any item of the condition of the rental unit and contents, and any additional comments, all of which this document lacked.

Section 35(4) of the Act requires that both parties sign the condition inspection report, and in this case, the tenant's signature was missing and the landlord submitted that he forgot to have the tenant sign the document.

As noted earlier, I excluded and therefore not considered the landlord's digital evidence showing photographs of the condition of the rental unit, and taken together with the lack of a compliant condition inspection report taken at the beginning or end of the tenancy, and the disputed evidence of the parties, I find the landlord submitted insufficient evidence on the balance of probabilities to support his claim for cleaning. I therefore dismiss the landlord's claim for \$367.50.

Hydro costs-

I find the landlord cannot support his claim that the tenant was responsible for 60% of the hydro costs, as there was not a written agreement that this was the case. The written tenancy agreement is absent as to any percentage and in fact required the tenant to apply for and have the hydro account in his name. I therefore dismiss the landlord's claim for hydro costs.

Filing fee-

I find merit with at least a large part of the landlord's application and I therefore grant him recovery of the filing fee of \$50.00, pursuant to section 72(1) of the Act.

Due to the above, I find the landlord is entitled to a total monetary award of \$1173.33, comprised of a rent deficiency for July 2014 of \$815.00, carpet cleaning of \$308.33, and \$50.00 for recovery of the filing fee paid for this application.

I direct the landlord to retain the tenant's security deposit of \$815.00 in partial satisfaction of his monetary award of \$1173.33 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 \$358.33, which is 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.

It must be noted that I do not accept the tenant's claim that he paid \$1500.00 as a security deposit, as there was no evidence presented from him that he paid this amount.

Tenant's application-

The tenant was advised at the hearing that I have declined to hear his application pursuant to section 58(2)(a) of the Act, as his claim of \$35,250.69 exceeded more than the monetary limit for claims under the *Small Claims Act*, or \$25,000.00.

At the hearing, the tenant was unwilling or did not offer to reduce his claim and instead raised the possibility of taking his dispute to another legal venue and I therefore declined to hear his application as this claim is outside the jurisdiction of the Act. I make no finding on the merits of the application.

Conclusion

The landlord's application for monetary compensation is granted in part as he has been granted a monetary award of \$1173.33, and directed to retain the tenant's security deposit of \$815.00 in partial satisfaction, with a monetary order being issued for the balance.

The tenant's application was declined as the monetary claim exceeded the jurisdictional amount allowed by the Act. I have made no finding of fact or law as to the tenant's application.

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 27, 2015

Residential Tenancy Branch

