Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MNSD, MND, FF

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 money owed or compensation for damage or loss; for a monetary Order for unpaid rent; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

At the hearing on April 28, 2015 the Landlord stated that sometime in October of 2014 the bailiff served the Tenant with the Application for Dispute Resolution and the Notice of Hearing. The male Tenant stated that these documents were served to them by the bailiff sometime in September of 2014.

On March 30, 2015 the Landlord submitted 40 pages of evidence and 13 photographs to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. At the hearing on April 28, 2015 the Landlord initially stated that this evidence was served to the Tenant by registered mail on March 13, 2015. He subsequently corrected himself to say it was mailed sometime in early April of 2015. The male Tenant stated that these documents received on April 10, 2015 and they were accepted as evidence for these proceedings.

On April 27, 2015 the Landlord submitted 1 page of evidence to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. This evidence was not brought to my attention at the hearing on April 28, 2015. At the reconvened hearing the Agent for the Landlord stated that this evidence was served to the Tenant by regular mail on April 27, 2015.

The male Tenant stated that the document that was allegedly mailed to the Tenant on April 27, 2015 has never been received. As there is no evidence to corroborate the Agent for the Landlord's testimony that this document was sent by regular mail or to refute the male Tenant's testimony that is was not received, I have not accepted this document as evidence. I note that this document is simply a written submission from the Agent for the Landlord, who will have the opportunity to present this evidence orally.

At the hearing on April 28, 2015 the male Tenant stated that the Tenant has not had time to serve the Landlord with a response to the evidence package served by the Landlord. For reasons outlined in my interim decision of April 28, 2015 the hearing on April 28, 2015 was adjourned.

On May 12, 2015 the Tenant submitted 12 pages of evidence, which included photocopies of photographs, to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. At the reconvened hearing the male Tenant stated that these documents were served to the Landlord by mail on May 12, 2015. The Agent for the Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings. The Tenant was permitted to submit/serve this evidence after the hearing commenced, as the hearing had been adjourned for the sole purpose of allowing them time to respond to the evidence submitted by the Landlord.

On May 04, 2015 the Landlord submitted five pages of evidence. As this evidence was served after the proceedings commenced and the Landlord was not granted permission to submit evidence after the hearing commenced on April 28, 2015, I refuse to accept this evidence.

On April 27, 2015 eleven pages of evidence were submitted to the Residential Tenancy Branch. Documentation on the submission indicates it was submitted by the Landlord; however the Agent for the Landlord stated that this evidence was not submitted by the Landlord. The male Tenant stated that the evidence was not submitted by the Tenant. As neither party recalls submitting this evidence, it was not accepted as evidence for these proceedings. I note that the majority of this evidence was submitted in evidence by the Tenants on May 12, 2015, with the exception on an internet printout on mould.

The hearing was reconvened on June 16, 2015 and was concluded on that date. Both parties were represented at both hearings. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, to call witnesses, and to make relevant submissions.

Preliminary Matter

On the Monetary Order Worksheet the Landlord is claiming $1,033.00 in “repair damage cost”, however the Landlord does not specify the nature of the damage.

At the hearing the Agent for the Landlord stated that the damage claim of $1,033.00 is outlined on the invoice dated August 12, 2014. This invoice lists a variety of repairs/installations, for which the Landlord was charged $1,238.07. There is a notation beside the invoice that indicates the bill includes the “cleaned up Done after the Tenants left” (sic). The notation appears to indicate that the Tenant is being charged $735.00 for labour and $298.00 for materials.

At the hearing the Agent for the Landlord was asked to explain which of the repairs on the invoice relate to the claim for damages of $1,033.00. She stated the claim includes $255.00 for disposing of garbage, $300.00 for cleaning, $23.00 for picking up trim, and $269.35 for repairing a screen door. Upon being advised that these claims totalled significantly less than the claim for $1,033.00, the Agent for the Landlord was unable to explain the full amount of the claim.

Section 59(2)(b) of the *Residential Tenancy Act (Act)* stipulates that an Application for Dispute Resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. I find that the Landlord’s Application for Dispute Resolution does not provide full details of the Landlord’s claim for damages. I find that the Landlord has not explained the claim for damages in a manner that is easily understandable, as even the Agent for the Landlord could not explain what the claim of $1,033.00.

I find that it would be prejudicial to the Tenant to proceed with the Landlord's claim, as the absence of details makes it difficult to prepare a full response to the claims. I therefore decline to consider the Landlord's claim for damages of $1,033.00 at these proceedings, as it does not comply with section 59(2)(b) of the *Act.*

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent and damage to the rental unit?
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 on June 05, 2013;
- they had a written tenancy agreement;
- the tenancy was a fixed term tenancy, the fixed term of which ended on June 04, 2014;
- the Tenant agreed to pay rent of $1,900.00 by the first day of each month; and
- the Tenant paid a security deposit of $950.00 and a pet damage deposit of $150.00.

The Agent for the Landlord stated that at the start of the tenancy a neighbour completed a condition inspection report on behalf of the Landlord and that neither Tenant was present when the report was completed. The Landlord and the Tenant agree that neither the Landlord, nor anyone acting on behalf of the Landlord, scheduled a date/time to inspect the rental unit at the start of the tenancy for the purposes of completing a condition inspection report.

The Agent for the Landlord stated that at the start of the tenancy an individual who acted on behalf of the Landlord told the Landlord he spoke with the Tenant in an attempt to schedule a time to inspect the rental unit at the end of the tenancy for the purposes of completing a condition inspection report. She stated that she does not know if the Landlord gave the Tenant written notice of a final opportunity to participate in a condition inspection at the end of the tenancy.

The male Tenant stated that at the end of the tenancy neither the Landlord, nor anyone acting on behalf of the Landlord, scheduled a date/time to inspect the rental unit at the end of the tenancy for the purposes of completing a condition inspection report. He stated that there was not effort to schedule a time verbally or by written notice.

The Landlord is seeking compensation, in the amount of $400.00, for unpaid rent from November of 2013. The Landlord and the Tenant agree that the Landlord agreed to reduce the rent for November of 2013 to $1,500.00 and that the Tenant paid $1,500.00 in rent for November.

The Landlord is seeking compensation, in the amount of $400.00, for unpaid rent from December of 2013. The Tenant stated that he believed the agreement to reduce the rent to $1,500.00 did not just apply to the month of November and that the rent would remain at $1,500.00 until the Landlord completed repairs to the rental unit. The Agent for the Landlord stated that the agreement to reduce the rent to $1,500.00 was only for November. The parties agree that only $1,500.00 in rent was paid for December of 2013.

The Tenant submitted a copy of an undated text message, which the Tenant stated he received from the Landlord in October of 2013. Although this message is not clear, it appears the Landlord is agreeing to a rent reduction to $1,500.00. It is unclear whether this rent reduction applies to a single month or the remainder of the tenancy.

The Landlord is seeking compensation for unpaid rent for February of 2014 and March of 2014. The Landlord and the Tenant agree that the Tenant paid $1,900.00 in rent for January of 2014 but did not pay any rent for February or March of 2014.

The male Tenant stated that the rental unit was vacated on March 14, 2014. The Agent for the Landlord stated that on March 15, 2014 a person acting as an agent for the Landlord, whom I will refer to as "A.F.", advised the Landlord that the Tenant had vacated on March 15, 2014. The Landlord and the Tenant agree that the Tenant did not inform the Landlord the rental unit had been vacated.

The Landlord and the Tenant agree that on February 25, 2014 "A.F." served the Tenant with a Ten Day Notice to End Tenancy, which was dated February 18, 2014. The parties agree that this Notice declared that the Tenant must vacate the rental unit by February 28, 2014.

The male Tenant stated that they did not dispute the Ten Day Notice to End Tenancy because they wanted to vacate the rental unit as they felt the condition of the rental unit presented a health risk. He stated that the Tenant did not give the Landlord written notice of their intent to vacate the rental unit as a result of a problem with the rental unit.

The Landlord is also seeking compensation for lost revenue arising from the early end to the tenancy. The Agent for the Landlord stated that on March 15, 2014 the Landlord began advertising the rental unit on two popular websites and that the Landlord was able to rent the unit to a third party for May 05, 2014.

The Landlord is seeking to recover $144.89 in utility charges. The Landlord submitted a gas bill in this amount for the period between March 20, 2014 and April 05, 2014. The Landlord and the Tenant agree that the Tenant was required to pay for gas consumed during the tenancy and that gas was used to heat the rental unit.

The Agent for the Landlord argued that the gas expense would not have been incurred if the Tenant had turned off the furnace when the rental unit was vacated. The male Tenant stated that the furnace was turned off at the end of the tenancy. He argued that even if the furnace had not been turned off, "A.F." was working in the unit and could have turned it off on behalf of the Landlord.

The Landlord is claiming compensation, in the amount of $752.21, for cleaning the rental unit. The Agent for the Landlord stated that the Landlord paid her this amount to help clean the rental unit and to supervise people who were cleaning outside of the rental unit. She stated that she paid people who were helping clean in cash and that the Landlord is not seeking compensation for those costs. She stated that she spent approximately 24 hours cleaning the rental unit.

The Agent for the Landlord stated that significant cleaning was required in the rental unit at the end of the tenancy.

The male Tenant stated that the inside of the rental unit was cleaned and left in reasonably clean condition at the end of the tenancy. He acknowledged that there was likely some cleaning required in the exterior of the rental unit. He stated that there was still snow on the ground so he was not able to properly clean the yard and that he did leave the personal items that can be seen in photographs 12 and 13.

The Landlord submitted photographs of the rental unit, some of which the Agent for the Landlord believes substantiate the claim for cleaning. She stated that all of the photographs were taken by her on May 02, 2014, with the exception of photographs 6, 9, and 10, which were taken on March 14, 2014 by a third party.

The male Tenant stated photographs 6 and 10 were taken on March 14, 2014 before the Tenant had fully vacated the rental unit. He stated that all of the personal items in the photographs had been removed by the time they fully vacated the rental unit. The Agent for the Landlord acknowledged that some of the items may have been removed after the photographs were taken, but she is certain the freezer and several empty boxes were left.

The male Tenant stated that photograph 9 does not represent the condition of the floor when they vacated the rental unit. He argues that the floor appears to be covered with drywall dust, which would be from the repairs being done in the basement of the rental unit.

The Agent for the Landlord acknowledged that drywall was being installed in the rental unit during the latter part of the tenancy, but she believes photograph 9 shows either snow or dirt on the floor.

The Landlord is claiming compensation, in the amount of $671.19, for the cost of flying the Agent for the Landlord to the rental unit to assist with, and oversee, the cleaning the rental unit.

The Landlord is claiming compensation, in the amount of $219.00, for the cost of locating the Tenants and serving them with the Application for Dispute Resolution. The Landlord and the Tenants agree that the Tenants did not provide the Landlord with a forwarding address at the end of the tenancy. The Agent for the Landlord contends that they incurred this cost as a result of the Tenants not providing the Landlord with a forwarding address.

The Landlord submitted an invoice, in the amount of $102.79, for locating an address for the Tenants. The Agent for the Landlord stated that an invoice, in the amount of $116.55, for serving the Tenants at that address was submitted in evidence; however I could not locate that invoice in the documents submitted.

Analysis

On the basis of the undisputed evidence, I find that the Landlord failed to comply with sections 23(3) and 35(2) of the *Act* when the Landlord did not give the Tenant at least two opportunities to inspect the condition of the rental unit at the start and the end of the tenancy. As the Tenant was not present when a condition inspection report was completed and the Landlord failed to comply with sections 23(3) and 35(2) of the *Act,* I find that the condition inspection report submitted in evidence by the Landlord has little evidentiary value.

On the basis of the undisputed evidence, I find that the Tenant agreed to pay monthly rent of $1,900.00 by the first day of each month. Section 26 of the *Act* requires tenants to pay rent when it is due.

On the basis of the undisputed evidence I find that the Landlord agreed to reduce the rent for November of 2013 to $1,500.00 and that the Tenant paid $1,500.00 in rent for November of 2013. As the Tenant paid the rent that was agreed upon for November of 2013, I find that the Tenant does not owe any additional rent for November of 2013. I therefore dismiss the Landlord's claim for unpaid rent from November of 2013.

The burden of proving that there was an agreement to amend a term of a tenancy agreement, including the amount of rent that is due in any given month, rests with the person who alleges there was such an agreement. In the absence of evidence that corroborates the Tenant's testimony that there was an agreement that rent would be reduced to $1,500.00 until repairs to the rental unit were complete or that refutes the Agent for the Landlord's testimony that there was only an agreement to reduce the rent for November of 2013, I find that the Tenant remained obligated to pay monthly rent of $1,900.00 for during the tenancy, except for November of 2013.

In determining that rent of $1,900.00 was due for months other than November, I placed little weight on the text message that was submitted in evidence by the Tenant. This message has little value because it does not clarify whether rent can be reduced for one single month or for the duration of the tenancy. Given that the rent reduction appears to be for work done in the rental unit, it seems unlikely that the reduction would be for an extended period of time.

As the undisputed evidence shows that the Tenant paid $1,500.00 in rent for December of 2013 and no rent was paid for February of 2014, I find that the Tenant still owes $2,300.00 in rent for those months.

On the basis of the testimony of the male Tenant, I find that the rental unit was vacated on March 14, 2014. I find his testimony more reliable than the hearsay evidence provided by the Agent for the Landlord, as I am unable to assess how "H.F." came to the conclusion that the Tenant vacated on March 15, 2014.

I find that the Tenant was obligated to pay rent, on a per diem basis, for all days the Tenant occupied the rental unit. I therefore find that the Tenant must pay rent for the 14 days the Tenant occupied the rental in March of 2014, at a daily rate of $61.29, which equates to $858.06.

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 received this Notice on February 25, 2014 I find that the earliest effective date of the Notice was March 07, 2014.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier that 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 March 07, 2014.

Section 46 of the *Act* stipulates that a Tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution

to dispute the Notice. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy ended on the effective date of the Notice. I therefore find that the Landlord ended this tenancy on March 07, 2014, in accordance with section 46 of the *Act.*

On the basis of the undisputed evidence, I find that this was a fixed term tenancy, the fixed term of which ended on June 04, 2014. I find that the Tenant fundamentally breached the tenancy agreement when the Tenant did not pay rent when it was due. I find that the actions of the Tenant resulted in this tenancy ending before the end of the fixed term tenancy. I therefore find that the Tenant must compensate the Landlord for any losses the Landlord experienced as a result of the tenancy ending prematurely*,* pursuant to section 67 of the *Act*.

I find the Tenant must compensate the Landlord for lost revenue experienced between March 15, 2014 and March 31, 2014, in the amount of $1,041.94; $1,900.00 for April of 2014; and between May 01, 2014 and May 04, 2014, in the amount of $245.16.

On the basis of the undisputed evidence, I find that the Tenant was obligated to pay for gas used during the tenancy. As the gas bill for $144.89 was for the period between March 20, 2014 and April 05, 2014, which is after the tenancy ended, I find that the Tenant is not obligated to pay this bill. I therefore dismiss the Landlord's claim for $144.89.

In determining that the Tenant is not obligated to pay the gas bill of $144.89, I placed little weight on the Landlord's submission that the expense would not have been incurred if the Tenant had turned off the furnace. I find there is insufficient evidence to refute the male Tenant's testimony that he did turn off the furnace when the rental unit was vacated. I find it entirely possible that "A.F.", who was working in the rental unit, used the furnace after the unit was vacated.

I find that the Landlord submitted insufficient evidence to establish that the interior of the rental unit, with the exception of the entrance area, was not left in reasonably clean condition at the end of the tenancy. In reaching this conclusion I determined there was insufficient evidence to corroborate the Agent for the Landlord's testimony that cleaning was required in the interior or to refute the male Tenant's claim that the unit was left in reasonably clean condition. I therefore dismiss the Landlord's claim for cleaning inside the rental unit.
In determining the claim for cleaning, I have placed no weight on the condition inspection report that was submitted in evidence. As it was not completed in accordance with the *Act* and the Tenant was not present when the report was completed, I find that it has little evidentiary value.

In determining the claim for cleaning, I have placed no weight on photographs 6 and 10, as the undisputed evidence is that these were taken on March 14, 2014. The Tenant vacated the rental unit on March 14, 2014 and the male Tenant stated that the property in those photographs was removed after the photographs were taken. In the absence of evidence from the person who took the photographs to establish that they were taken after the rental unit had been fully vacated, I find they do not serve to establish the condition of the rental unit after it was vacated.

In determining the claim for cleaning, I have placed no weight on photograph 9. In my view, the substance on the floor is far more consistent with drywall dust that is likely associated to repairs being done in the rental unit by the Landlord than with dirt that is left on the floor after a rental unit has been vacated.

On the basis of photographs 11, 12, and 13, I find that some cleaning was required in the entrance area and the exterior of the rental unit. I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to clean these areas and move all personal possessions from those areas. On the basis of the photographs of these areas, I find that the Landlord is entitled to compensation of $100.00 for cleaning these areas.

I find that the Landlord is not entitled to compensation for the cost of flying the Agent for the Landlord to the rental unit to oversee, and assist with, the cleaning of the rental unit. In my view the Tenant should not be obligated to pay costs associated with the Landlord conducting business from a remote location or costs associated with the Landlord opting to hire people from outside the community to assist with conducting business as a Landlord.

I find that the Landlord is entitled to compensation, in the amount of $102.79, for costs associated to locating an address for the Tenants. I find this is an expense that would not have been incurred if the Tenants had paid the rent when it was due and had left the rental unit in reasonable clean condition.

I find that the Landlord is not entitled to compensation, in the amount of $116.55, for serving documents to the Tenants. Once the Landlord had obtained an address for the Tenants, I find there were less expenses means of serving documents to them. I find that the Landlord did not need to incur these costs to participate in this proceedings and I therefore dismiss the Landlord's claim for compensation for those costs.

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

The Landlord has established a monetary claim, in the amount of $6,647.95, which is comprised of $6,345.16 in unpaid rent/lost revenue; $102.79 for locating an address for the Tenant; $100.00 for cleaning; and $100.00 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 Tenant's security deposit and pet damage deposit of $1,100.00, in partial satisfaction of this monetary claim

Based on these determinations I grant the Landlord a monetary Order for the amount $5,547.95. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, 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: June 17, 2015

Residential Tenancy Branch