



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent, loss of rent revenue, to retain the security and pet deposits and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution. The monetary worksheet provided with the application also set out a claim for damage to the rental unit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The landlord served the tenant via registered mail to the address supplied by the tenant at the end of the tenancy. That mail was accepted on January 27, 2015. The tenant said the address is for her parents and they did not give her the documents until just two weeks prior to the hearing.

The tenant confirmed that the evidence supplied by the landlord sent via registered mail received on June 22, 2015 by the tenants' parents was given to her with the hearing documents.

The tenant said that she would have liked to submit copies of the Notice to end tenancy given to her by the landlord. I explained that the landlord had served the tenant at the address the tenant had provided and that the landlord could not be faulted with the delay in service of the hearing documents. However, I assured the tenant that if there was any evidence that I felt should be considered or that she believed should be viewed I could request that evidence be submitted. I then determined that the hearing would proceed as the tenant was fully aware of the claim being made.

The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the included evidence and testimony provided.

Preliminary Matters

A monetary worksheet setting out the claim was attached to the application. The evidence included a second monetary worksheet that increased the total claim from \$1,460.68 to \$1,844.94. The landlord added a claim for loss of wages in the sum of \$261.04 and an additional \$125.10 for wall repair. The tenant received both worksheets at the same time.

The landlord submitted a claim for loss of wages and registered mail costs. An applicant can only recover damages for the direct costs of breaches of the Act in claims under Section 67 of the Act, but “costs” incurred with respect to filing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. As a result, these portions of the claim were denied.

The landlord has claimed a filing fee paid on a previous application made via the Direct Request Proceeding process. Filing fees are not considered as part of the Direct Request application and cannot then be transferred for consideration under a different file. The fee is a cost borne by a landlord when application is made via Direct Request.

Issue(s) to be Decided

Is the landlord entitled to compensation for unpaid rent and loss of rent revenue?

Is the landlord entitled to compensation for damage to the rental unit?

May the landlord retain the deposits paid?

Background and Evidence

The tenancy commenced on October 15, 2014. Rent was \$725.00 due on the first day of each month. A security deposit and pet deposit were paid in the sum of \$325.50 and \$200.00 respectively. This was a month-to-month term. A copy of the tenancy agreement was not supplied as evidence.

A move-in condition inspection report was not completed.

The landlord has made the following claim:

Change locks	\$48.18
Wall repair	325.10
Loss of February rent revenue	362.50
Unpaid January 2015 rent	725.00
TOTAL	\$1,335.68

The landlord withdrew the claim for cleaning that was included in the monetary calculation.

The landlord did not dispute the tenants' testimony that she had given notice to end the tenancy effective January 31, 2015.

The tenancy ended on January 15, 2015 as the result of a 10 day Notice to end tenancy for unpaid rent. The landlord served the tenant with the Notice and the tenant vacated on the effective date of that Notice.

The landlord began to advertise the unit on January 8, 2015, using a single popular web site and was able to locate a new tenant effective February 15, 2015. A copy of that tenancy agreement was supplied as evidence. The landlord has requested compensation for the loss of one-half February 2015 rent revenue as a result of the tenants' breach of the Act.

The landlord said that when the tenant was absent from the rental unit her brother would come and go from the unit. The landlord suspects the tenant had a second key cut but returned only one key to the landlord. The landlord had to have the locks changed and has claimed that sum.

The landlord provided a January 22, 2015 invoice for work completed to repair damage caused to several walls by the tenants' cat. The invoice indicated that walls were repaired, sanded and painted. The cat would enter and exit through a window and scratched the walls. A coloured photograph of wall damage was submitted as evidence. The tenant was given a black and white photocopy of that photograph. Therefore, the photograph was not considered as evidence. A fair process requires a party to provide the same quality evidence to the Residential Tenancy Branch (RTB) and the respondent.

The tenant said that she did not give her brother an extra key to the unit. When she was away she would leave the key under the mat so he could enter to care for her cat. The tenant returned the only key she had.

The tenant confirmed that she did not pay January 2015 rent in the sum of \$725.00.

The tenant said that when she paid rent in December 2014 she gave the landlord notice she would vacate at the end of January 2015. When the tenant failed to pay January 2015 rent and was given the 10 day Notice ending tenancy she accepted the Notice and vacated on the effective date of the Notice; January 15, 2015.

The tenant does not understand why the landlord is claiming rent for February as she knew the tenant was vacating at the end of January.

The tenant told the landlord to keep the deposits paid and that they could be applied toward unpaid January 2015 rent.

The tenant said that the wall scratches were there at the start of the tenancy and that her cat did not cause the damage.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act and proof that the party took all reasonable measures to mitigate their loss.

There was no evidence before that the tenant had copied the key to the home. The landlord only suspected the tenant had copied the key. I find it believable that the tenant had placed the key under the mat in order to allow her brother access and have no compelling evidence before me to the contrary. Therefore I find that the claim for changing the locks is dismissed.

The landlord submits the tenant's cat caused damage to the wall and the tenant said the damage pre-existed her tenancy. In the absence of a move-in condition inspection report or any other corroborating evidence I find that the landlord has failed to prove, on the balance of probabilities, that it was the tenant's cat that caused the wall damage. There was no evidence supplied to allow me to have any confidence the walls had not been damaged at the start of the tenancy. Therefore, this portion of the claim is dismissed.

Pursuant to section 44(1)(ii) I find that the tenancy ended effective January 15, 2015; the effective date of the Notice and the date the tenant vacated.

The tenant has confirmed that January 2015 rent has not been paid. Rent is owed up to the effective date of a Notice. Therefore, I find that the landlord is entitled to unpaid rent in the sum of \$362.50 from January 1 to January 15, 2015.

I find that the loss of rent revenue suffered by the landlord occurred from January 16 to 31, 2015 inclusive, in the sum of \$362.50. The landlord was not expecting the tenant to vacate before the end of January and when the tenant vacated as a result of the Notice the landlord could not reasonably be expected to immediately locate a new tenant. This early end of tenancy resulted in a loss of revenue.

The landlord did not dispute that the tenant had given notice she would vacate at the end of January 2015. The landlord was then responsible for locating a new tenant for February 2015. The fact that the tenant failed to pay January 2015 rent does not impact any loss of rent revenue for the following month.

This was not a fixed-term tenancy that might support a loss of rent revenue but a month-to-month term that allows a tenant to give notice ending the tenancy. When the

tenant gave notice to the landlord in December 2014 I find the tenancy was then to end effective January 31, 2015, at which point the tenant's responsibility for rent would end.

Therefore I find that the claim for loss of rent revenue beyond January 31, 2015 is dismissed.

As the landlords' application has merit, and I find that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security and pet deposits in the sum of \$525.00 in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$250.00. 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.

Conclusion

The landlord is entitled to compensation in the sum of \$725.00 for loss of rent revenue and unpaid rent.

The landlord is entitled to retain the security and pet deposits.

The landlord is entitled to filing fee costs.

The balance of the claim is dismissed.

This decision is final and binding and 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: July 17, 2015

Residential Tenancy Branch

