



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, MND, FF

Introduction

This was the reconvened hearing dealing with the landlord's application for dispute resolution under the Residential Tenancy Act ("Act"). The landlord applied for authority to retain the tenants' security deposit, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee.

This hearing began on May 26, 2015, and dealt only with issues raised by the tenants, as they had submitted that they were not served with the landlord's application or evidence.

An Interim Decision which was entered on May 27, 2015 should be read in conjunction with this Decision and further, it is incorporated herein, by reference.

The parties were informed at the original hearing that the hearing would be adjourned in order to consider the issues contained in the landlord's application. At this hearing, the landlord listed the documentary evidence he sent to the tenants' legal counsel, as instructed, and the tenants did not raise any issues regarding the service of the application or evidence. The legal counsel did not attend the reconvened hearing.

At the hearing, the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond to the other, and make submissions to me.

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 evidence regarding the facts and issues in this decision.

Procedural and Preliminary Matters-

In the Interim Decision of May 27, 2015, the landlord was advised that I would not accept any of his evidence which was not submitted in accordance with 2.5 and 3.14 of the Rules. In advance of the first hearing and in support of his application, the landlord submitted a monetary order worksheet listing his monetary claim and black and white copies of 3 photographs. After the original hearing, the landlord submitted a copy of the

written tenancy agreement. Also after the original hearing and after the Interim Decision had been made, the landlord submitted a packet of evidence, the same as he sent the tenants after the original hearing, which was received by the Residential Tenancy Branch ("RTB") on June 25, 2015.

The landlord was put on notice that the purpose of the adjournment was not to allow the landlord to submit evidence that he was required to submit with his application and no later than 14 days prior to the original hearing. I have therefore excluded from consideration all evidence of the landlord, with the exception of the aforesaid monetary order worksheet. The copies of photographs were of such poor quality, I find that they were of no value to the landlord.

Issue(s) to be Decided

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

Background and Evidence

According to the written tenancy agreement provided by the landlord, which I have viewed, and the evidence at the hearing, this fixed term tenancy began on September 4, 2014, was to end by operation of the agreement on November "31", 2014, monthly rent was \$1350.00, and the tenants paid a security deposit of \$650.00. The landlord has retained the security deposit.

The landlord confirmed there was no move-in or move-out condition inspection report.

The landlord's monetary claim is as follows:

Clean/replace toilet	\$250.00
2 broken washing machines	\$300.00
Replace the lock	\$50.00
Unpaid utilities	\$150.00
Late move-out, 1 day	\$35.00
2 missing blinds	\$70.00
10 days lost rent	\$350.00
Vacuum/cleaning	\$50.00

In support of and in response to the landlord's application, the participants provided the following evidence-

Toilet cleaning and replacement-

The landlord submitted that the tenants had not flushed the toilet and that when he attempted to clean the toilet, it exploded. The landlord claimed he had to replace the toilet.

In response, the tenants denied knowing what the landlord was talking about and that the landlord failed to arrange a move-out inspection, even though the tenants thought that would be the case.

2 broken washing machines-

The landlord submitted that within a week of the tenancy starting, the tenants complained the washing machine was not working, so he replaced that washing machine, and that the second one broke as well. The landlord submitted that the tenants caused 2 washing machines to break.

The tenants submitted that the machines had not been used for a year prior to the tenancy, that the connecting hoses were not attached properly, and that when the landlord made the repair, mould began to grow inside the rental unit. The tenants denied breaking either washing machine.

Replace the lock-

The landlord submitted that after the first week of the tenancy, the lock broke, and that he had to replace it. The landlord's claim is \$30.00 for the lock and \$20.00 for labour.

In response, the tenants submitted that the lock was extremely old to start with and agreed that the lock broke after the first week. The tenants denied misusing the lock.

Unpaid utilities-

The landlord submitted that the tenants were required to register the utilities in their name and that they failed to do so. After the tenancy, the landlord had to put the utilities in his name, causing an expense for which the tenants were obligated, according to the landlord.

The tenants agreed that the utilities were to be put in their name, and that failing to do so was an oversight, as they were concerned with health related issues, such as mould.

Late move-out, 1 day-

The landlord submitted that the tenants were to move out on September 30, 2014, and that they failed to do so until October 1, 2014.

In response, the tenants submitted that they did attempt to move out on September 30, 2014, but that they were quite ill. The landlord agreed to the extra day, according to the tenants.

2 missing blinds-

The landlord submitted that when the tenants vacated, he noticed that the blinds from a basement window and den were missing.

In response, the tenants denied taking the blinds and submitted that there were no blinds over these windows at the start of the tenancy. The tenants submitted further that the landlord had sent a text message saying he would return their security deposit, indicating no damage to the rental unit.

10 days lost rent-

The landlord submitted that due to the tenants not providing a month's notice that they were vacating, he had to rent out the rental unit very quickly, and did not do so until the 16th or 17th of October. The landlord submitted that the request for 10 days of loss of rent revenue was in error.

In response, the tenants submitted that they had a text message from the landlord saying they could leave at the end of the month.

As a follow-up, the landlord agreed that he told the tenants they could leave at the end of September, but that they had to pay for the utilities.

Vacuum/cleaning-

The landlord submitted that the tenants did not properly clean or vacuum the rental unit prior to vacating and that as a result, he was required to clean and vacuum.

In response, the tenants submitted that they left the rental unit cleaned and vacuumed.

Analysis

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 results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section

67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party.

Cleaning/replacement of the toilet; broken washing machines; broken lock; 2 missing blinds; vacuum/cleaning-

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

I find that a key factor in establishing a claim for damage allegedly caused by a tenant, repairs, and replacement of building elements 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 the circumstances before me, the landlord has failed to meet his obligation under of the Act of conducting an inspection with the tenants and completing the inspection reports, resulting in the landlord being unable to establish the condition of the rental unit either at the beginning of the tenancy or at the end. The landlord also failed to produce any other independent records showing the state of the rental unit at the start and end of the tenancy.

In the absence of any such evidence, I find the landlord has not met his burden of proof on the balance of probabilities that the tenants caused damage to the rental unit or left the rental unit unreasonably clean. Due to the insufficient evidence of the landlord, I therefore dismiss these claims of the landlord.

Unpaid utilities-

While I accept that the tenants were responsible for the utilities during the partial month of this tenancy, as I have excluded the landlord's evidence from consideration, I find the landlord submitted insufficient evidence to prove what those expenses were, as the landlord failed to submit receipts, invoices, or bills for these utilities.

The landlord's claim for unpaid utilities is therefore dismissed.

Late move-out, 1 day; 10 days lost rent-

I find the landlord submitted insufficient evidence to show that he has suffered a loss of rent revenue or that he has taken reasonable steps to minimize his loss, as he has not submitted proof of advertisements of the rental unit or when the rental unit was re-rented and at what price. I was also influenced by the landlord's statements that he agreed with the tenants that they could vacate the rental unit.

Due to the insufficient evidence of the landlord, I dismiss his claim for loss of rent revenue and overholding in the rental unit.

As I have dismissed the landlord's monetary claims as noted above, I dismiss his application, including his request to recover the filing fee, without leave to reapply.

Additionally, as I have dismissed the landlord's application, which included a claim against their security deposit, I order the landlord to return the tenants' security deposit in full, forthwith.

As I have ordered that the landlord return the tenants their security deposit, I grant the tenants a final, legally binding monetary order pursuant to section 62 of the Act for their security deposit of \$650.00, which is enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants this amount without delay, the monetary order may be served upon the landlord and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord's application is dismissed, due to insufficient evidence.

The landlord is ordered to return the tenants' security deposit and the tenants have been granted a monetary order of \$650.00, the amount of their security deposit.

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: July 20, 2015

Residential Tenancy Branch

