



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MND, MNSD & MNDC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other. The Residential Tenancy Act permits a party to serve another by mailing, by registered mail to where the other party resides. The Supreme Court of British Columbia has held that a party cannot avoid service by refusing to claim their registered mail. I determined the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the other despite the fact that both parties refused to pick up the registered mail sent by the other party.

This is a difficult hearing. The tenancy was characterized by a great deal of animosity. The landlord describes the tenant as being irresponsible and attempting to avoid her responsibilities. The tenant described the landlord as abusive and a bully. Further, he failed to make repairs when requested. Both parties were obsessed by giving evidence attempting to put-down the other rather than focusing on the issues. Both parties repeated their evidence many times. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?
- d. Whether the tenants are entitled to an order for the return of the security deposit?
- e. Whether the tenants are entitled to an order to recover the cost of the filing fee?

Background and Evidence

The parties entered into a tenancy agreement that provided that the tenancy would start on August 1, 2013. The rent was \$2500 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$1250 and a \$100 FOB deposit at the start of the tenancy for a total of \$1350.

In late February the tenants gave the landlord written notice they would be vacating the rental unit on March 24, 2015. The tenants vacated on that date. The keys were not returned until April 7, 2015. The tenants gave the landlord their forwarding address in writing on April 7, 2015.

Landlord's Application:

Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. On January 4, 2015 the tenants experienced a problem with leakage from the faucet. The telephoned the landlord but he failed to pick up. The tenant testified they were concerned about the risk it would pose for the rental unit. They phoned the plumber who attended and fixed the problem and charged the tenant \$290.87. The tenant withheld \$300 of the rent for January.

Section 26(1) provides as follows:

26 (1) A tenant must 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.

The tenant submits the plumbing repairs were emergency repairs and as a result she had a right to deduct this bill. However, the bill from the plumbing company states "Customer called on Jan 4, 2015. Service was done January 5/2015. It was not emergency."

I determined the landlord is entitled to the amount claimed in the sum of \$300 as the tenant failed to prove this was an emergency repair and the tenant did not have a legal right to withhold the rent.

- b. I dismissed the landlord's claim of \$2500 for rent for April. The tenant gave the landlord the required one month written notice and she vacated on March 24, 2015. The landlord regained possession on that date and changed the locks. It is irrelevant to this claim that the keys were not returned until April 7, 2015.
- c. I determined the landlord is entitled to the sum of \$55.25 for the cost of the moving out fee. The tenant was obliged to pay this fee to the strata. The tenant objected to the overtime portion as one of the elevators was not working. She testified she talked to a person who stated they would try to have it waived. The landlord has had to pay that sum and it appears it has not been waived. This is not the landlord's responsibility and he is entitled to the amount claimed.
- d. The landlord claimed the sum of \$380 for damage to the suite. He testified he did the work himself as he is a handyman. He estimates that it took him 5 hours of work and \$80 in materials which he had on hand. The photographs indicate there was some damage. However, I find the landlord has greatly exaggerated

this claim. I determined the landlord is entitled to \$150 for the cost of labour and materials for this claim.

- e. I dismissed the landlord's claim of \$200 for damage to two FOBs. The landlord failed to prove this claim. I accept the testimony of the tenant that the FOB numbers were being changed at that time and the landlord's problems could be resolved by having the FOB numbers changed. The landlord failed to present sufficient evidence that he paid an additional \$200.
- f. I dismissed the claim of \$22.68 for the cost of registered mail. This claim relates to the cost of litigation. The only jurisdiction relating to costs that an arbitrator has is the cost of the filing fee.
- g. I determined the landlord is entitled to \$86 for the cost of changing the door locks. The tenants vacated the rental unit on March 24, 2015. The tenants failed to return the keys. I determined the landlord acted reasonably in having the locks changed given the strained relationship between the parties.
- h. The landlord claimed \$527 to replace the washing machine, \$16 for a washer kit, \$85 for the delivery of the washer and \$75.36 for the tax. I determined the landlord failed to prove the problem with the washing machine was caused by the intentional or negligent conduct of the tenant. As a result I ordered this claim be dismissed.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$591.25 plus the \$50 filing fee for a total of \$641.86.

Security Deposit

I determined the security deposit and the FOB deposit totals the sum of \$1350. I ordered that the landlord shall retain the sum of \$641.86 for the security deposit. I further ordered that the landlord pay to the tenant the balance of the security deposit and FOB deposit in the sum of \$708.14.

It is further Ordered that this sum be paid forthwith. The parties are given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Tenant's Application - Analysis

The Application for Dispute Resolution filed by the tenant seeks an order for the return of the security deposit plus the cost of the filing fee. It was not necessary for the tenants to make their application as the landlord's claim seeks to retain the security deposit and the arbitrator is required to order the return of any excess security deposit to the tenant. The tenant is entitled to the monetary order as a result of the landlord's application. As a result the tenant's application is dismissed.

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 17, 2015

Residential Tenancy Branch

