



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Denwood Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MNR, 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 or utilities; for a monetary Order for damage; and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on January 12, 2015 the Application for Dispute Resolution and the Notice of Hearing were personally served to the Tenant. The Tenant acknowledged receipt of these documents. I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*.

On May 15, 2015 the Landlord submitted seven pages of evidence to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Agent for the Landlord stated that these documents were posted on the door of the rental unit sometime in May of 2015, although he does not recall the exact date of service. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present oral evidence, to ask questions, and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent or utilities and for damage to the rental unit?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on May 01, 2013 and that the Tenant agreed to pay rent of \$400.00 by the first day of each month.

The Landlord and the Tenant agree that \$375.00 of the rent was paid directly to the Landlord by the Provincial Government and that the Tenant was to pay an additional \$25.00. The Agent for the Landlord stated that the additional \$25.00 per month was never paid, and he is seeking compensation of \$200.00 for the period between May 01, 2013 and December 31, 2013.

The Tenant stated that he paid \$25.00 each month to the Witness for the Landlord, who lived in the rental unit with him. He stated that he was never given a receipt for any of these cash payments. The Witness for the Landlord stated that he has never collected rent from the Tenant.

The Agent for the Landlord stated that he has never attempted to collect the additional \$25.00 in rent from the Tenant primarily because he was too busy.

The Tenant stated that he vacated the rental unit on November 18, 2013. The Landlord stated that he is not certain when the Tenant vacated the rental unit but he believes it was sometime between November 18, 2013 and November 22, 2013.

The Tenant stated that on November 22, 2013 he sent the Landlord written notice that he had vacated the rental unit. The Agent for the Landlord acknowledged receiving this letter, although he cannot recall the date he received it.

The Tenant stated that on November 18, 2013 he verbally advised the Witness for the Landlord that he was vacating the rental unit immediately and that the Witness for the Landlord gave him permission to end the tenancy without written notice.

The Witness for the Landlord acknowledged that on November 18, 2013 the Tenant told him he was vacating the rental unit. He denies giving the Tenant permission to end the tenancy without notice.

The Agent for the Landlord stated that the Witness for the Landlord is someone who lives in the house and he employs on a casual basis. He stated that the Witness for the Landlord does not have authority to act as an agent for the Landlord in regards to entering into a tenancy agreement or ending a tenancy agreement.

The Tenant contends that the Witness for the Landlord acted for the Landlord in various capacities and should be considered an agent for the Landlord. The Tenant contends that the Witness for the Landlord told the Tenant he could end the tenancy with "short notice", which amounts to a verbal agreement to end the tenancy.

The Landlord and the Tenant agree that:

- the Landlord received rent for December of 2013 from the Provincial Government;
- this tenancy was the subject of dispute resolution proceedings on March 20, 2014;

- at the conclusion of those proceedings the Landlord was ordered to refund the \$375.00 he had been paid for rent for December of 2013; and
- I may refer to the decision from the proceedings on March 20, 2014 when prior to rendering a decision in this matter.

The Landlord is seeking compensation for loss of revenue arising from the late notice provided by the Tenant. The Tenant contends this matter was already determined in the previous proceedings and cannot be reconsidered at these proceedings.

The Witness for the Landlord stated that shortly after the rental unit was vacated he placed advertisements for the rental unit on bulletin boards in various locations in the community and the Agent for the Landlord stated that he placed advertisements on bulletin boards in various locations in a neighboring community. The Witness for the Landlord and the Landlord agree that the Landlord paid the Witness \$20.00 to post the notices. The Agent for the Landlord stated that he was not able to find a new tenant until January or February of 2014.

The Tenant contends that the Landlord's efforts to advertise were inadequate and that he should have advertised via the internet.

The Landlord is seeking compensation, in the amount of \$120.00, for cleaning the rental unit. The Agent for the Landlord and the Witness for the Landlord stated that at the end of the tenancy extensive cleaning was required in the room the Tenant had occupied.

The Tenant stated that he did not clean his room at the end of the tenancy and that he left some personal belongings in the room. He stated that the Witness for the Landlord told him he did not need to clean the room.

The Witness for the Landlord stated that he spent approximately 12 hours cleaning the room, for which he was paid \$120.00. He stated that he did not tell the Tenant he did not have to clean his room. The Landlord submitted an invoice that indicates \$120.00 was paid to the Witness for the Landlord on February 07, 2014.

The Landlord is seeking compensation, in the amount of \$100.00, for painting the rental unit. The Agent for the Landlord and the Witness for the Landlord stated that the room occupied by the Tenant needed to be painted because the Tenant smoked in his room.

The Tenant stated that he did not clean the walls at the end of the tenancy because the Witness for the Landlord told him he did not need to clean them.

The Tenant contends that other people smoked in the residential complex and that the walls in the Tenant's bedroom would be impacted by that second-hand smoke. The Tenant contends that the impact of smoking in his room was exacerbated by his inability to open the window in the room, which was sealed shut.

The Witness for the Landlord stated that he only smoked in his room and that nobody else smoked in the common areas.

The Witness for the Landlord stated that he spent approximately 10 hours painting the room, for which he was paid \$100.00. He stated that he did not tell the Tenant he did not have to clean the walls. The Landlord submitted an invoice that indicates \$100.00 was paid to the Witness for the Landlord on February 07, 2014.

The Tenant submits that the Landlord submitted no documentary evidence to establish that it required twenty hours to clean/paint the rental unit, which the Tenant contends is an excessive amount of time to clean a room that is approximately 100 square feet.

The Tenant stated that after he moved into the rental unit the Witness for the Landlord told him that he would have to pay \$50.00 per month for his share of the utilities. He stated that he paid \$50.00 to the Witness for the Landlord each month he lived in the rental unit, for which he did not receive a receipt. He stated that prior to the start of the tenancy the Agent for the Landlord did not tell him he would have to pay a portion of the utility charges.

The Agent for the Landlord stated that prior to the start of the tenancy he did not tell the Tenant he would have to pay a portion of the utility charges. He stated that agreement was between the Witness for the Landlord and the Tenant, as they shared the rental accommodations.

The Witness for the Landlord stated he pays the hydro and telephone bill and then collects 1/3 of the bills from the other two occupants of the residential complex. He stated that the Tenant typically paid him \$50.00 per month but if the monthly bills were higher than \$150.00 the Tenant would have to pay an additional amount. He stated that he was in charge of collecting money for the utilities only, as the services were in his name, and that he did not collect rent on behalf of the Landlord.

The Witness for the Landlord stated that the Tenant has not paid his portion of the bills that were submitted in evidence, which include a hydro bill for the period between December 04, 2013 and December 27, 2013, in the amount of \$262.37 and a telephone bill, dated November 07, 2013, in the amount of \$52.50. He stated that the Landlord has not compensated him for the Tenant's portion of these bills.

The Tenant submits that I should draw a negative inference from the fact the Landlord did not seek compensation for any of these claims until January of 2015, which is after the Tenant was granted a monetary Order requiring the Landlord to pay \$375.00 to the Tenant. The Tenant submits that the Landlord's claim should be dismissed because it is frivolous, vexatious, and/or unsubstantiated.

The Tenant contends that he has had to participate in seven payment hearings and that on May 21, 2015 a Provincial Court Judge order the Landlord to pay \$375.00 to the

Court pending the outcome of this dispute resolution proceeding and that on July 16, 2015 the Judge ordered the Landlord to pay granted the Tenant the \$375.00.

The Tenant contends that the delay in filing the Landlord's claims and the delay in paying the \$375.00 demonstrates intent to harass the Tenant and to cause him hardship.

The Agent for the Landlord stated that he did not file his Application for Dispute Resolution prior to January 09, 2015 because he did not expect to be able to collect any money from the Tenant even if he was awarded a monetary Order and it was not until the Tenant was enforcing his monetary Order that he was willing to put in the time and effort of filing an Application for Dispute Resolution.

Analysis

There is a general legal principle that places the burden of proving a loss on the person who is claiming compensation. In regards to the claim for unpaid rent of \$200.00, the burden of proving that this rent was not paid in cash, as claimed by the Tenant, rests with the Landlord.

I find that the Landlord submitted insufficient evidence to establish that the Tenant did not pay an additional \$25.00 in rent each month to the Witness for Landlord. In reaching this conclusion I was heavily influenced by the absence of evidence that refutes the Tenant's testimony that it was paid to the Witness for the Landlord or that corroborates the Witness for the Landlord's testimony that it was not paid. As the Landlord has failed to meet the burden of proving the loss, I dismiss the Landlord's claim for unpaid rent.

In determining the claim for unpaid rent I was influenced, to some degree, by the undisputed evidence that the Tenant paid a portion of the utility bill to the Witness for the Landlord during his tenancy. I therefore find it credible that the Tenant would have paid the additional \$25.00 in rent to this party.

In determining the claim for unpaid rent I was influenced, to some degree, by the undisputed evidence that the Landlord did not ask for or attempt to collect the \$25.00 until the Landlord filed this Application for Dispute Resolution. In my view, this delay lends credibility to the Tenant's submission that the rent was being paid.

After reviewing the decision from the hearing on March 30, 2014, I am satisfied that I have the authority to consider the Landlord's claim for lost revenue from December of 2013. After the hearing of March 30, 2014 the Residential Tenancy Branch Arbitrator at ordered the Landlord to return the rent collected for December of 2013 after determining that the Landlord did not have the right to collect rent for that month. This is decidedly different than the claim before me, in which the Landlord is seeking compensation for lost revenue for December of 2013.

In the decision from the previous proceeding the Residential Tenancy Branch Arbitrator acknowledged the distinction between a claim for unpaid rent and lost revenue. In her decision she wrote:

“I find that the landlord's position that they are owed compensation for the tenant's violation of section 45 of the Act, due to inadequate Notice to vacate, is not a matter to be determined under this application. Although I have found that the landlord is not entitled to collect or retain **rent** payments for a period during which the tenant was no longer residing in a suite, I make no findings on the issue of damages to which the respondent landlord may or may not be entitled for short notice to vacate or any other issue. The landlord is at liberty to make their own application.”

It is clear that the previous Arbitrator concluded that the Landlord had the right to file an Application for Dispute Resolution claiming compensation for lost revenue for December of 2013, and I concur with that conclusion.

Section 4(1)(c) of the *Act* stipulates that a tenancy ends when a landlord and tenant agree, in writing, to end the tenancy. As there is no evidence that the parties agreed, in writing, to end the tenancy on November 18, 2013, I cannot conclude that the tenancy ended on that date in accordance with section 44(1)(c) of the *Act*.

Even if I were to accept the Tenant's submission that the Witness for the Landlord was an Agent for the Landlord and that the Witness for the Landlord told the Tenant he could vacate the rental unit without proper notice, I would conclude that this tenancy had not been ended in accordance with the *Act*, as the legislation does not permit parties to verbally end a tenancy.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends when a tenant abandons or vacates the rental unit. On the basis of the undisputed testimony of the Tenant, I find this tenancy ended on November 18, 2013, when the Tenant vacated the rental unit.

Section 45 of the *Act* stipulates that a tenant may end a periodic tenancy by providing the landlord with written notice to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. I find that the Tenant did not end this tenancy in accordance with section 45 of the *Act* because he did not provide the Landlord with written notice of his intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due.

I find that the written notice that was provided on November 22, 2013 did not provide the Landlord with sufficient notice of the Tenant's intent to vacate the rental unit. I find that the “late” notice made it difficult for the Landlord to find new tenants for the rental unit for December 01, 2013. I find that the “late” notice directly contributed to a loss of rental revenue for the month of December of 2013. As the Landlord made a reasonable effort to find a new Tenant after the rental unit was vacated, I find that the Tenant must

compensate the Landlord for the loss of revenue that resulted from the late notice, in the amount of \$375.00.

In determining the claim for lost revenue I have placed little weight on the Tenant's submission that the Landlord should have advertised the rental unit via the internet. The *Act* requires landlords to make reasonable efforts to mitigate losses; however it does not require those efforts to be exhaustive. It is my experience that many individuals seeking shared accommodations commonly check postings on bulletin boards and I therefore find that the Landlord's method of advertising was reasonable.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2)(a) of the *Act* when he did not clean the room and remove all of his personal property. In the absence of evidence to the contrary, I accept the Witness for the Landlord's testimony that he was paid \$120.00 to clean the room and I find that the Landlord is entitled to recover this amount for cleaning the room.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2)(a) of the *Act* when he did not clean the walls of the bedroom he occupied. In the absence of evidence to the contrary, I accept the Witness for the Landlord's testimony that he was paid \$100.00 to paint the room and I find that the Landlord is entitled to recover this amount for painting the room.

In determining the claim for painting the room, I have placed little weight on the Tenant's submission that second hand smoke from other areas of the residential complex would have contributed to the need to paint the walls at the end of the tenancy. As the Tenant acknowledged smoking in the room, I find that the walls would have required painting even if nobody else had smoked in the residential complex. I do not find that the presence of second-hand smoke would have significantly impacted the cost of repairing the damage caused by the Tenant smoking in the room.

In determining the claim for painting the room, I have placed little weight on the Tenant's submission that his inability to open the window contributed to the need to paint the walls at the end of the tenancy. Although I accept that the smoke damage may have been minimized if the Tenant had been able to ventilate the room, I find that the walls would likely have required painting even if the window had been left open at all times.

In the absence of evidence that corroborates the Tenant's testimony that the Witness for the Landlord told him he did not need to clean the room/walls or that refutes the Witness for the Landlord's testimony that he did not tell the Tenant he did not need to

clean the room/walls, I have placed no weight on the submission that the Tenant was not required to clean the room at the end of the tenancy. Even if I were to accept that the Witness for the Landlord had the authority to advise the Tenant he did not need to clean the room, there is simply insufficient evidence to establish that he gave such authority.

In determining the claims for painting/cleaning the room I have placed limited weight on the Tenant's submission that there is no documentary evidence to establish that it would take 20 hours to clean/paint a 100 square foot room. In the absence of evidence to the contrary, I accept the Witness for the Landlord's testimony that he spent approximately 22 hours cleaning and painting the room. In my view this is not an unreasonable amount of time, particularly when personal property had to be removed, the Tenant had not cleaned prior to the end of the tenancy; and the walls needed to be cleaned/prepped prior to painting.

On the basis of the undisputed evidence, I find that when the Landlord and the Tenant entered into this tenancy agreement the Tenant did not agree to pay a portion of the utility bills. I therefore find that the Tenant was not obligated to pay any portion of the utility charges for the residential complex and I dismiss the Landlord's claim for unpaid utilities.

The Tenant's application to dismiss the Landlord's claims as frivolous and vexatious is dismissed, in part, because I have concluded that some of the claims have merit.

It is my experience that many landlords do not pursue compensation for losses, particularly when the losses are not significant, as it is a time consuming and onerous process to obtain a monetary Order and to enforce that Order. It is also my experience that many landlords opt to pursue such claims after they have been ordered to pay money to a tenant, as the process of enforcing a monetary Order becomes less onerous. I find it likely that this was the Landlord's motivation in these circumstances, as the Agent for the Landlord contends, and I do not find that the Application for Dispute Resolution was filed primarily to be vexatious.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$645.00, which is comprised of \$375.00 in lost revenue, \$220.00 in damages, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for the amount of \$645.00. 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.

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: August 20, 2015

Residential Tenancy Branch

