



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord's application (filed April 13, 2015): MNDC, MNR, MND, MNSD, FF

Tenant's application (filed August 24, 2015): MNSD, MNDC, OLC, FF

Introduction

This Hearing was convened to consider cross applications. The Landlord filed an Application for Dispute Resolution seeking a monetary award for damages and unpaid rent; compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit towards partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenant.

The Tenant filed an Application for Dispute Resolution seeking return of the security deposit; an Order that the Landlord comply with the Act, regulation or tenancy agreement; compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing. At the beginning of the Hearing, both parties confirmed that they were not expecting any other persons to join them on their behalf.

It was determined that the parties served each other with their Notice of Hearing documents and copies of their documentary evidence by registered mail.

Issues to be Decided

1. Is the Landlord entitled to a monetary award for damages and unpaid rent? If so, may the Landlord apply the security deposit towards his monetary award?
2. Is the Tenant entitled to an Order that the Landlord comply with the Act, a monetary award for the cost of preparing for the Hearing; and return of the security deposit?

Background and Evidence

There was no written tenancy agreement; however, the parties agreed that this tenancy began on December 1, 2014. Monthly rent was \$550.00, including utilities. The Tenant paid a security

deposit in the amount of \$275.00 and a pet damage deposit in the amount of \$275.00 at the beginning of the tenancy. No condition inspection report was completed at the beginning or the end of the tenancy.

The Tenant gave oral testimony about issues which were not relevant to either application. I have recorded only the relevant issues in this Decision.

The Landlord testified that the Tenant moved out of the rental unit on March 15, 2015. The Tenant testified that he moved out on March 14, 2015 at 20:14. The parties agreed that the Tenant paid rent for the full month of March, 2015.

The Tenant's agent testified that the Tenant gave his notice to end the tenancy in writing by hand delivering the notice to the Landlord's agent, on February 28, 2015.

The Landlord stated that he didn't receive the Tenant's notice until March 15, 2015.

The Landlord acknowledged that his agent collected rent from the Tenant and answered the Tenant's questions with respect to the tenancy. He acknowledged that his agent's telephone number was included on advertisements for rent. The Landlord's agent was not available to give testimony at the beginning of the teleconference.

The Landlord testified that he asked the Tenant if he wanted to use the Landlord's leather couch while the Tenant was living in the rental unit and stated that the Tenant agreed. He stated that the Tenant's cats damaged the couch and that it was not repairable. He provided photographs of the couch in evidence, along with an advertisement for a similar new couch.

The Tenant's agent stated that the Tenant told the Landlord he didn't want the couch, and that the Landlord said the couch had been left by a previous tenant. The Tenant's agent stated that she was there and overheard the conversation. The Tenant provided a written statement from another person stating that he was there when the Tenant moved into the rental unit and that he witnessed the conversation with respect to the couch. The Tenant's agent stated that the Tenant's cats did scratch the couch, but that the Tenant didn't want the couch and had asked the Landlord to remove it. She stated that the couch was not real leather and was already worn when the Tenant moved in.

The Landlord testified that the Tenant did not clean the rental unit at the end of the tenancy and left bags full of soiled kitty litter in and around the rental unit. He stated that the rental unit smelled so bad from the kitty litter that he was not able to re-rent the rental unit until May 1, 2015. The Landlord seeks compensation for the month of April's rent. He stated that he "would have had already had an ad in for the rental unit" when the Tenant moved out, because there were three identical suites in the rental property and a running ad for renters.

The Tenant's agent disputed that the Tenant left a mess in the rental unit. She stated that she and another woman were there to clean the rental unit and that they left it "spotless". The Tenant provided a written statement from the other woman. The Tenant's agent testified that

the rental unit was not clean when the Tenant moved in. She stated that the Tenant left some bags, but that they were full of garbage, not kitty litter. The Tenant's agent stated that there was no garbage service at the rental unit, but that the Landlord had advertised the rental unit as "all included", except for phone.

Both parties provided photographs in evidence. The Tenant's agent stated that some of the photographs provided by the Landlord must have been taken of another one of the units because there was no dirt in the cupboards and the bath tub was very clean at the end of the tenancy. The Landlord testified that the photographs were of the rental unit. He questioned why the Tenant did not take photographs of the kitchen and bathroom if they were so clean. The Landlord stated that the Tenant's own photographs show dirt underneath the couch and streaks on the floor. The Tenant replied that the photographs of the living room were only taken because the Landlord made a remark about "mould" in the doorway as the Tenant was leaving, so the Tenant took the photographs from the doorway to show there was no mould in the doorway and the floor was shiny clean.

The Landlord did not provide a Monetary Order Worksheet setting out the details of his monetary claim calculation; however, his Application indicates that he is seeking a total award against the Tenant in the amount of \$825.00.

The Tenant's Application indicates that he is seeking a monetary award, calculated as follows:

Return of pet damage deposit	\$275.00
Return of security deposit	\$275.00
Cost of printing photographs	\$4.50
Cost of serving documents (\$9.20 + 12.55)	\$21.75
Lost wages for attending the teleconference	<u>\$140.00</u>
TOTAL CLAIM	\$716.25

Analysis

Regarding the Tenant's Application:

There is no provision in the Act for the cost of preparing for a Hearing, other than recovery of the filing fee. Therefore, the Tenant's application for recovery of the cost of printing photographs, service of documents, and lost wages, is dismissed.

I explained to the parties that the security deposit and pet damage deposit would be dealt with under the Landlord's Application for Dispute Resolution and therefore, the Tenant need not have filed his own Application.

The Tenant has been unsuccessful in his Application for Dispute Resolution and therefore I find that he must bear the cost of the filing fee.

I dismiss the Tenant's Application for Dispute Resolution in its entirety.

Regarding the Landlord's Application:

In a claim for compensation for damage or loss under the Act, regulation or tenancy agreement, the applicant has the burden of proof to establish their claim on the civil standard, the balance of probabilities.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 7(2) of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

To prove a loss and have the Tenant pay for the loss requires the Landlord to prove four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

It is important to note that the Landlord's agent signed into the teleconference 1 hour and 15 minutes after the conference commenced. At that point, we were in the process of completing the teleconference and I had already found that the Tenant had provided his notice to end the tenancy in writing to the Landlord's agent on February 28, 2015. I based this finding on the evidence of the Tenant and his agent. "Landlord" is defined in the Act, in part, as:

- "(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
- (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement."

The Landlord's agent wished to give testimony with respect to the Tenant's submissions about service of his notice to end tenancy. I explained to the parties that my decision with respect to notice had already been made and therefore it was not open to re-argument, pursuant to the principles of *res judicata*. *Res judicata* is a rule in law that a final decision, determined by an officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties.

With respect to *res judicata*, the courts have found that:

“...the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case....”

Even if I were to accept that the Landlord (or his agent) did not receive the Tenant's notice to end tenancy until March 15, 2015, which I do not, I find that the Landlord provided insufficient evidence of reasonable attempts made to minimize his loss. The Tenant paid full rent for the month of March, 2015. The Landlord did not provide any documentary evidence with respect to when he advertised the rental unit for rent, or where, or how many prospective tenants were interviewed.

Therefore, the Landlord's claim for April's rent is dismissed.

The regulation provides that a Condition Inspection Report, completed in accordance with the regulation, is evidence of the state of repair of the rental unit on the date of the inspection, unless either the Landlord or Tenant has a preponderance of evidence to the contrary. Section 38 of the Act provides that a landlord's right to claim against a security deposit for damages is extinguished if the landlord does not complete a Condition Inspection Report at the beginning of the tenancy. In this case, there was no Condition Inspection Report completed at the beginning or the end of the tenancy. Both parties provided conflicting documentary evidence with respect to the cleanliness of the rental unit at the end of the tenancy. The onus is on the Landlord as Applicant to provide sufficient evidence to support his claim. I find that the Landlord has not provided sufficient evidence. The Tenant provided written statements from two witnesses who state that the rental unit was clean at the end of the tenancy. This portion of the Landlord's claim is also dismissed.

Contrary to the provisions of Section 13 of the Act, the Landlord did not prepare a tenancy agreement in writing. A written tenancy agreement may contain provisions for what is included in rent. For example: whether utilities are included, and if so, what utilities; whether there is furniture included; whether pets are allowed, and if so, how many and what kind, etc. The parties disagreed with respect to the couch. The Tenant provided written statements which corroborate his version of events. Therefore, I dismiss this portion of the Landlord's claim.

The Landlord's Application has not been successful and therefore I decline to order the Tenants to reimburse the Landlord for the filing fee.

The Landlord's claim has been dismissed in its entirety, and therefore I Order the Landlord to return the security deposit and pet damage deposit to the Tenant, forthwith. Attached to the Tenant's copy of this Decision is a Monetary Order in the amount of \$550.00.

Conclusion

Both parties' Applications are **dismissed without leave to reapply**.

The Landlord's claim against the security deposit has been dismissed. Therefore, I hereby provide the Tenant with a Monetary Order in the amount of **\$550.00**, representing return of the security deposit and pet damage deposit, for service upon the Landlord. This Order may be filed in the Provincial Court 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: September 21, 2015

Residential Tenancy Branch

