



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF, SS

Introduction

This hearing convened as a result of the Landlord's Application for Dispute Resolution wherein the Landlord requested a Monetary Order for damage to the rental unit, unpaid rent, money owed or compensation for damage or loss under the Act regulation or tenancy agreement, authority to retain the security deposit, an Order for substitutional service to recover the filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

During the hearing the Landlord confirmed she did not require an Order for substitutional service pursuant to section 71. Accordingly, this request is noted as withdrawn.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. What should happen with the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified as to the background of her application and stated as follows: the tenancy began December 1, 2014; monthly rent was payable in the amount of \$650.00; the Tenant paid a security deposit in the amount of \$325.00.

The Landlord stated that the Tenant gave written notice to end the tenancy on March 27, 2015 with an effective date of April 15, 2015. At that time, the Tenant suggested the Landlord use her security deposit as half a month's rent as the Tenant intended to leave mid-month. When the Tenant failed to pay rent for April 2015, the Landlord issued a 10 Day Notice to End Tenancy for unpaid rent on April 1, 2015 with an effective date of April 13, 2015 (the "Notice"). The Landlord testified that the Tenant vacated the rental unit sometime between April 6 and 8, 2015.

The Landlord testified that the Tenant did not provide her forwarding address in writing as required by the *Act*.

The Landlord further testified that although the Tenant vacated the rental unit in early April of 2015, she did not re-rent the rental unit until August 1, 2015. She stated that she had such a "bad experience" with these tenants that she was reluctant to re-rent. She also stated that she attempted to sell the property and believed it would be more appealing to a potential buyer if it was not tenanted. She stated that she listed the property for sale at the end of May 2015.

When asked to comment on her advertising efforts, the Landlord stated that she spread the word about her available rental through word of mouth. She stated that she believed that she was not able to advertise as she did not have an order of possession and was not sure when the Tenant was going to move out. She further stated that she had to separate prospective tenants who declined the rental unit as they wanted more certainty in terms of a move in date.

The Landlord sought the sum of \$650.00 for unpaid rent for the Month of April 2015 as well as \$52.50 for cleaning of the rental unit. Introduced in evidence was a receipt from a cleaning company for the \$52.50 claimed. The Landlord also sought recover of the services fees charged by a third party to serve the Tenant.

The Landlord stated that while a move in condition inspection report was prepared, the Tenant refused to participate in the move out.

The Tenant testified that she did not pay her rent in April of 2015 as she suggested the Landlord retain her security deposit for half a month's rent. The Tenant stated that she sent the Landlord a text message on March 15, 2015 advising the Landlord she would be moving out by the 15th of April. The Tenant further stated that the Landlord insisted she provide *written* notice to end the tenancy which she did on March 27, 2015.

The Tenant stated that participated in the move out condition inspection contrary to the Landlord's claims. She stated that she met with the Landlord on April 12, 2015 when she moved out, and that at that time, she and the Landlord went over the condition of the rental unit.

The Tenant stated that the rental unit was clean and swept and that aside from some scuffing on a baseboard there was no damage or cleaning required.

The Tenant stated that she moved from the rental unit because she felt the Landlord, and persons acting on behalf of the Landlord, were entering the rental unit without her knowledge and consent, and that in doing so she felt very uncomfortable. The Tenant testified that contrary to the Landlord's claim that she listed the home for sale in the latter part of May 2015, it was in fact listed the entire time she was living there. The Tenant stated that on two separate occasions, in March of 2015, while she was home sick from work, the realtor came into the rental unit with prospective buyers without the Tenant's knowledge or consent. The Tenant stated that she told the Landlord about these occasions, and expressed her concern that this was likely happening a lot more than the two times she was home. She also stated that as the Landlord was readying the home for sale during the entirety of her tenancy, tradespeople such as those responsible for lawn maintenance, plumbers and painters were frequently at the rental property. The Tenant stated that she did not feel that her privacy was respected at the rental unit and that accordingly she ended her tenancy.

In brief reply the Landlord stated that while she met with the Tenant on April 15, 2015 to have a look at the rental unit, she told the Tenant what cleaning needed to be done and that they were supposed to meet again on April 19, 2015. The Landlord testified that the Tenant failed to attend on April 19, 2015 as agreed such that the Landlord attended to hiring persons to do the required cleaning.

The Landlord agreed that the realtor and prospective purchasers entered the rental unit on two occasions without giving the Tenant proper notice. The Landlord stated that at no time did she ever enter the rental unit without the Tenant's knowledge and consent.

The Landlord denied that the rental home was for sale during the tenancy and stated she put it back on the Market in May of 2015. Notably, this was inconsistent with her testimony that the realtor entered the rental unit on two occasions during the tenancy.

The Landlord reiterated that while the Tenant did send her a text message, the Tenant gave her written notice on March 27, 2015.

Analysis

A tenant may end a tenancy provided they follow sections 45 and 52 of the *Residential Tenancy Act*. Section 45 deals with a Tenant ending a tenancy and section 52 addresses the form and content of a notice to end tenancy, those sections provide as follows:

Tenant's notice

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice,
 - (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
 - (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.
- (4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Applying the above, the effective date of the Tenant's written notice is April 30, 2015.

Under section 26 of the Act, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenant has some authority under the Act to not pay rent. In this situation, although I accept that the Tenant was upset by the unannounced intrusions into the rental unit by the Landlord's realtor and prospective purchasers, the Tenant had no authority under the Act to not pay rent.

For these reasons, I find that the Landlord is entitled to be compensated the lost rent for the month of April 30, 2015 as requested and accordingly I award her the sum of **\$650.00**.

I also accept the Landlord's evidence that the rental unit required cleaning and that the Tenant did not return to the rental unit to finish cleaning the rental unit or for the final condition inspection. As such, I award the Landlord the sum of **\$52.50** representing the amount she paid third parties to clean the rental unit.

The Landlord, having been substantially successful is also entitled to recover the filing fee of **\$50.00** for a total of **\$752.50**.

I order that the Landlord retain the security deposit of **\$325.00** in partial satisfaction of the claim and I grant the Landlord an Order under section 67 for the balance due of **\$427.50**. The Landlord must serve the Monetary Order on the Tenant and should the Tenant not pay, this Order may be filed in the B.C. Provincial Court (Small Claims Division) and enforced as an Order of that Court.

Conclusion

The Landlord is entitled to compensation for the rent for April 2015, the cost of cleaning the rental unit and the filing fee. The Landlord is authorized to retain the security deposit in partial satisfaction of the amount owing and is granted a Monetary Order for the balance due in the amount of **\$427.50**.

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: October 19, 2015

Residential Tenancy Branch

