



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes

For the landlord – MNR, MNSD, MNDC, FF

For the tenant – MNDC, MNSD

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. The tenant applied for a Monetary Order to recover the security deposit and for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement.

Procedural Matter

At the outset of the hearing, the matter of evidence was discussed. The tenant had applied for a review consideration concerning the original decision. The tenant's application was granted on September 21, 2015 and a review hearing was scheduled for today's date. After the Review Hearing was granted the landlord submitted another 27 pages of evidence. The Review Consideration Decision did not grant the parties the right to provide additional evidence for the Review Hearing.

In considering the landlord's late evidence I have applied rule 3.14, the landlord as the applicant, must submit their evidence so that it is received by the Residential Tenancy Branch ("RTB") and the other party not less than 14 days prior to the hearing, and in this case, the landlord did not. In considering whether to accept the landlord's evidence, I find that the landlord delayed in sending his evidence until after the Review Consideration Decision was made. I have therefore excluded this portion of the landlord's evidence pursuant to rule 3.17 as this is not new evidence that was not available at the time of the original hearing.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to a Monetary Order to recover the security deposit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on November 01, 2014 in room four. The tenant had previously lived in room two of the same unit. The tenancy was for a fixed term until August 30, 2015. Rent for this room was \$450.00 per month and the tenant had shared access to common areas of the unit such as the kitchen, living room and bathroom with the other three rooms. The tenant paid a security deposit of \$225.00 on November 01, 2014.

The landlord testified that the tenant attended a move in condition inspection of the rental unit; however the condition inspection report signed by the tenant was completed

for room four and not room two. The landlord testified that room 2 was freshly painted and in a good condition at the start of the tenancy. At the end of the tenancy the tenant did not attend the move out condition inspection of room two despite at least two opportunities to do so. The inspection of room two was completed in the tenant's absence with a witness. The landlord agreed he did receive the tenant's forwarding address by email on March 31, 2015 and filed his application for Dispute Resolution on April 01, 2015.

The landlord testified that the tenant only provided a few days' notice to end the tenancy and moved out on March 31, 2015. The landlord testified that he tried to re-rent the room and posted advertisements on Used Victoria, an internet site and on the local collage notice board. The landlord testified that the first advertisement went up on April 03, 2015 and was renewed when it expired. There was very little initial response as this is primarily a unit rented to students and it was the low session. The landlord testified that he later had around four viewings a week but the unit was not re-rented until August 01, 2015. The landlord testified that as he was unable to re-rent the unit for April, May, June and July the landlord seeks to recover four months' rent of \$1,800.00.

The landlord testified that the tenant left the unit in an unclean condition. In the tenant's room the walls and trim were left dirty, scratched, there was a black line on the wall and marks from the soles of shoes. The laminate floor was left with a sticky substance, the closets were dirty, the windows and coverings were left dusty and the electrical outlets were left staining with a sticky substance. The landlord testified he had to repaint and clean the room. The landlord seeks to recover \$100.00 for this work. The landlord testified that the rest of the unit in the common areas were also left dirty.

The landlord seeks an Order to keep the security deposit of \$225.00 in partial satisfaction of his claim. The landlord also seeks to recover the filing fee of \$50.00.

The tenant disputed the landlord's claim for a loss of rent for four months. The tenant testified that he had to vacate the room earlier because of problems he experienced in

the unit. One of the other tenants sharing the unit broke into the tenant's room while he was sleeping, Other tenants were taking food belongings to the tenant out of the fridge Other tenants were smoking in the unit and the landlord had assured the tenant that this was a non-smoking unit because the tenant has allergy's to smoke. Another tenant, a teenager, was disturbing the tenant when he kept knocking on his door with questions, continually asking for things, and hogging the bathroom. The tenant testified that there was a student living in a room who had been suspended from school. This tenant watched TV all night and chain smoked. The tenant put a compliant in writing about this tenant to the landlord but the landlord did not do anything about him. The tenant testified that he was the only tenant caring for the common areas and he was sick of being the janitor clearing up the unit.

The tenant testified that he informed the landlord of the other tenant trying to break into his room and the landlord evicted that tenant. The tenant testified that this is when he moved into room two. The tenant testified that he informed the landlord that other tenants were smoking in the unit and the landlord posted notices on the walls about not smoking inside. The landlord also evicted the teenage tenant around the end of February or beginning of March because he did not pay rent. The tenant testified that due to the problems he had in the unit with other tenants and the landlord's failure to deal with these problems the tenant gave his notice and moved out of the unit.

The tenant testified that he had advertised his room in order to try to rent it prior to vacating and he found a female tenant. The landlord did not want a female living in the house so refused her.

The tenant disputed the landlord's claim for cleaning and painting the tenant's room. The tenant testified that the room was not freshly painted when he moved in it was a disaster from the tenant that was evicted. The bed was very uncomfortable and the tenant had to purchase two comforters to put on the bed. The tenant testified that he cleaned the unit before he moved out and the landlord did not do a move in condition inspection report for room two when he moved in.

The landlord testified that every time he got a complaint about other tenants he dealt with them. When the tenant complained about the other tenant breaking into his unit that tenant was given a warning, then a One Month Notice to End Tenancy and was later evicted from the unit. When the tenant complained about other tenants smoking inside the unit the landlord went downstairs immediately but could not smell smoke. When he knocked on the other tenant's door there was no one at home. The landlord then put up notices in the unit to remind tenants that no smoking is allowed inside the unit or on the lawn. When the tenant complained about another tenant's behaviour, that tenant was also given a One Month Notice and evicted from the unit.

The landlord testified that the female tenant the tenant testified he arranged to rent his room did not want the room as she did not want to live in the unit with men. She was looking for a unit to share with other women.

The tenant declines the opportunity to cross examine the landlord.

The landlord cross examined the tenant and asked the tenant if he moved to Vancouver when he broke the lease agreement. The tenant responded he did because the house was uninhabitable when he returned home from a trip.

Analysis

I have carefully considered all the admissible evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim for a loss of rent from April to July, 2015 of \$1,800.00; I refer the parties to s. 45(2) and 45(3) of the *Act* which state:

(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.

I find the tenant has insufficient evidence to show the landlord failed to comply with a material term of the tenancy agreement or did not correct the situation within a reasonable period. I accept the tenant encountered some issues living in this shared unit; however, I am satisfied that the landlord took steps to correct the situation by evicting two of the other tenants by serving them with Notices to End Tenancy. I also find the landlord took steps to determine if other tenants were smoking in the unit and put up notices to remind tenants not to smoke inside.

I find the landlord's evidence more compelling regarding these matters and therefore I find the earliest the tenant could legally end the tenancy would be August 30, 2015. The tenant testified that he tried to re-rent the unit and found a prospective tenant that the landlord refused to rent to. The landlord testified that the prospective tenant did not want to rent the room due to living with male tenants. It is important to note here that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails. Consequently, it is impossible for me to determine that the female tenant was refused by the landlord and not because she did not want to live in the unit with male tenants.

Further to this the landlord has an obligation to mitigate any loss pursuant to s. 7(2) of the *Act* by attempting to re-rent the unit as quickly as possible. I am satisfied from the undisputed testimony before me that the landlord did place advertisements from April 03, 2015; however, there is insufficient evidence to show the landlord continued to advertise the unit and make reasonable effort to re-rent the unit beyond this date after the advertisements expired. I further accept that given the tenant's lack of legal Notice and the limited time the landlord had to re-rent the unit for April 01, 2015, the landlord was not able to find a new tenant for April 2015. Therefore, I dismiss the landlord's claim for any additional loss of revenue beyond April 2015 but do award the landlord the amount of \$450.00 for the loss of rental income for April, 2015.

With regard to the landlord's claim for damage to the unit; the landlord did not complete a move in condition inspection report of the tenant's room he later moved into. The condition inspection report provided in evidence shows the inspection was completed for room four on August 31, 2014. The move out report was done for room two. The report also indicates that all areas of the unit were inspected yet many of these areas were common areas shared between four tenants. The tenant disputed that he left his room dirty and testified that the room was not clean at the start of the tenancy. The landlord must therefore provide corroborating evidence to meet the burden of proof that the tenant's room was not left reasonably clean or that it was clean and freshly painted at the start of the tenancy. The landlord is also required to provide evidence showing the actual cost to repaint the room and have it cleaned. In the absence of any corroborating evidence I find the landlord has failed to meet the burden of proof in this matter and the landlord's claim for \$100.00 is dismissed.

With regard to both parties claim upon the security deposit; the landlord seeks to retain the security deposit to offset against the loss of rent. The tenant seeks to recover double the security deposit. I refer the parties to s. 38(1) of the *Residential Tenancy Act* (*Act*) that says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenant's forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying

for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Therefore, based on the above and the evidence presented I find that the landlord agreed he did receive the tenant's forwarding address on March 31, 2015. As a result, the landlord had until April 15, 2015 to either return all of the tenant's security deposit or file a claim to keep it. . As the landlord filed his claim on April 01, 2015 the tenant is not entitled to have the security deposit doubled.

Further to this, as I have found the landlord's claim for a loss of rent to be partially successful I Order the landlord to keep the security deposit of \$225.00 in partial satisfaction of his claim.

As the landlords' claim has some merit I find the landlord is entitled to recover the filing fee of **\$50.00** from the tenant pursuant to s. 72(1) of the *Act*.

Calculation for Monetary Order

April 2015 loss of revenue	\$450.00
Filing Fee	\$50.00
<i>Less Security Deposit</i>	<i>(-\$225.00)</i>
Total Monetary Award to landlord	\$275.00

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$275.00**. The Order

must be served on the tenant. Should the tenant fail to comply with the Order, the Order may be enforced through the Provincial Court as an Order of that Court.

As the security deposit has been awarded to the landlord, the tenant's application is dismissed without leave to reapply.

I HEREBY vary the original Decision and Order made on September 08, 2015 pursuant to s. 82(3) of the *Act*.

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: November 25, 2015

Residential Tenancy Branch

