Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, SD, FF

Introduction

This hearing convened as a result of the Landlord's Application for Dispute Resolution filed May 6, 2015 wherein the Landlord requested a Monetary Order for damage to the rental unit, unpaid rent and, to recover the filing fee.

Both parties appeared at the hearing. The Landlord was represented by his son, B.K., who also acted as his agent. 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.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation for unpaid rent or damages?

2. What should happen with the Tenant's security deposit?

3. Should the Landlord recover the filing fee?

Background and Evidence

B.K. testified that no written tenancy agreement existed. He provided testimony as to the tenancy as follows: the tenancy began in January of 2014; monthly rent was payable in the amount of $1,050.00; and, the Tenant paid a security deposit of $525.00. No condition inspection report was created at the start of the tenancy.

B.K. further testified that rent was increased from $1,050.00 to $1,100.00 in April of 2014.

B.K. stated that the Tenant left mid-September without paying rent for September 2014. He confirmed that a move out condition inspection report was also not completed at the end of the tenancy. The rental unit was not re-rented until October 15, 2014.

A previous hearing occurred in which the Tenant's applied for return of double the security deposit. The presiding Arbitrator made the following findings and directions in a Decision dated April 23, 2015:

> *I find the evidence of the tenant credible that he paid $525 security deposit in 2012 which has not been returned to him. However, I find insufficient evidence that he ever served the landlord with his forwarding address in writing as required by section 38 of the Act. In the hearing, the tenant confirmed to the landlord that the address on this Application is his forwarding address and he would like his security deposit returned. The landlord said they intended to file an Application as there was unpaid rent as well as damages.* ***The landlord was told that he has 15 days from today, April 23, 2015 to conform to the provisions of section 38 of the Act and either return the deposit or file an Application to claim against it.***

The Landlord applied for Dispute Resolution on May 6, 2015 seeking to retain the security deposit.

The Landlord claimed that the Tenant failed to pay rent for September 2014. The Landlord also claimed that the Tenant left the water running in the bathtub, which overflowed into the downstairs unit damaging the ceiling as well as a love seat owned by the renter downstairs who operated a hair salon.
The Landlord also provided a letter which he stated was written and signed by the owner of the hair salon located in the unit below the rental unit and in which is written the following:

I am the owner of the [business name]. [The Tenant] lived upstairs last year. There was a over flowed water from celling. That time I showed to the [Tenant] and she admitted this over fawl.

[Reproduced as Written]

This letter does not appear to have a signature, rather initials are provided over what appears to be a phone number. As well, the letter is written in two different colours of ink. The majority of the letter is in blue ink although the phone number and what appears to be initials, as well as "File #" are written in black ink. It is not clear whether the downstairs renter wrote the letter in its entirety, or if the initials noted above the phone number are her signature.

Introduced in evidence was a letter dated December 15, 2014 from D.S., an employee of Q.G. In this letter D.S. writes:

Water damage from bathroom in #101 due to overflow of water. I have examined the ceiling in the beauty salon (beneath #101) And I have determined there is no plumbing damage. The Water damage came from the overflow of water in the bathroom in Unit #101, which is right above the Beauty Salon.

The total cost to repair this damage is $350.00.

[Reproduced as Written]

At the hearing B.K. confirmed that the amount paid was the same as the $350.00 estimate.

The Landlord also introduced a copy of a receipt, dated October 22, 2014, for "love seat cleaning unit 101" in the amount of $147.00.

In the within application the Landlord sought compensation for the following:

Rent for September 2014	$1,100.00
Love seat cleaning	$147.00
Repair to downstairs ceiling	$350.00
Filing fee	$50.00
TOTAL CLAIMED	$1,647.00

The Tenant testified that the tenancy began on March 20, 2012. He said he paid his rent in cash, at the insistence of the Landlord. He denied any rent was owing and claimed that he also paid his rent in cash for September 2014 and that the Landlord refused to provide him a cash receipt.

The Tenant also testified that the Landlord raised his rent in February of 2015 by $50.00. The Tenant says that when he told the Landlord he was required to give 90 days-notice of any such increases the Landlord told him to move out. The Tenant said that although he did not agree with this amount, he paid the $1,100.00 as requested for February to August 2015. The Tenant stated that he then paid $950.00 for rent in September of 2015 as he believed the Landlord was not entitled to receive the $50.00 rent increase in February, March and April as he did not have the required 90 days-notice and in doing so the Tenant was reclaiming the $150.00 overpayment.

The Tenant denied any rent was owing to the Landlord and requested $200.00 reimbursement for the May, June, July and August overpayment of $50.00 per month.

B.K. confirmed at the hearing that the Landlord was prepared to refund the $200.00 overpayment as he was aware the rent increase was not permitted.

The Tenant testified that the bathtub never overflowed, and that he did not cause water damage to the ceiling below. He stated that the first time the Landlord brought up such an allegation was when the Tenant questioned the Landlord's illegal rent increase. He said that at that time the Tenant told the Landlord to come upstairs and look in the rental unit as he did not believe it originated from there. The Tenant said that the Landlord refused his offer, and after a couple of months the Landlord had yet to have the rental inspected with respect to the alleged flooding.

The Tenant also took issue with the amount claimed for cleaning the love seat noting that the alleged water leak occurred in May 2014, yet the cleaning was in October 2014.

Analysis

Section 43 of the *Residential Tenancy Act* provides for rent increases and reads as follows:

> **Amount of rent increase**
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> **43** (1) A landlord may impose a rent increase only up to the amount
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> (a) calculated in accordance with the regulations,

(b) ordered by the director on an application under subsection (3), or

(c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

The rent increase from $1,050.00 to $1,100.00 represents a 4.76% increase. As the allowable rent increase in 2014 was 2.2%, this rent increase was not permitted. During the hearing the Landlord confirmed that he was prepared to credit the Tenant the $200.00 overpayment.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. Further, 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. In this case, the Landlord has the burden of proof to prove their claim.

The Landlord claims $1,100.00 for rent he says was not paid in September 2014. The Tenant denies any rent is owing to the Landlord, claims he paid $950.00 in cash for September and the Landlord failed to issue him a receipt. There is no evidence the Landlord issued a 10 Day Notice of unpaid rent in September 2014. Further, the Landlord alleged the Tenant moved out mid-September 2014; despite this, the Landlord failed to make a claim for unpaid rent until May 6, 2015.

In all the circumstances, and on a balance of probabilities, I find the Landlord has failed to prove rent was outstanding for September 2014.

The Landlord claimed the Tenant overflowed the bathtub in the rental unit causing water damage to the lower unit. The Tenant denies this occurred and stated that the Landlord made this allegation only when the Tenant disputed the illegal rent increase. The Tenant further argues that the evidence submitted by the Landlord does not prove the water leak originated from his suite.

The owner of the salon, who rents the unit below the rental unit, was not available to testify, be cross examined or speak to the letter. I do not know if she drafted the letter or merely signed it with her initials and phone number. As such, I am unable to give her letter significant evidentiary weight.

The letter submitted by D.K. of the business Q.G., simply provides that the ceiling was damaged due to an overflow of water. This letter is dated December 15, 2014, some 7 months after the water damage is alleged to have occurred. D.K. was also not available to testify or answer questions as to the contents of his letter. It does not appear he attended the rental unit and as such it is questionable how he came to the conclusion the water damage originated from the Tenant's bathroom.

In all the circumstances, and on a balance of probabilities, I am unable to find that the water damage to the salon ceiling originated due to the actions or neglect of the Tenant in violation of the Act or agreement. Accordingly, I dismiss the Landlord's claim for compensation for $350.00 for the repairs to the downstairs' ceiling.

While I have found the Landlord has failed to prove the Tenant caused the water damage, and therefore is not entitled to compensation for related losses, I wish to point out that even had I found the Tenant liable, I would have dismissed the Landlord's claim for compensation for the love seat cleaning. Had the water damage occurred in May of 2014, and caused damage to the downstairs' renters' love seat, it would have been reasonable to attend to cleaning of the love seat at that time. Instead, the cleaning appears to have occurred in October of 2014, some five months later. I am persuaded

by the Tenant's argument that the love seat cleaning was not contemporaneous with the alleged flood and likely not a result of the alleged water damage.

As I have dismissed the Landlord's claim in its entirety I also dismiss his claim for recovery of the filing fee.

The Tenant is entitled to return of his security deposit in the amount of $525.00. While the Tenant did not make a formal application to dispute a rent increase, B.K. confirmed in the hearing that the Landlord would return $200.00 to the Tenant for excess rent collected. Pursuant to section 63 of the *Residential Tenancy Act*, I incorporate the Landlord's agreement to return $200.00 to the Tenant and award the Tenant a Monetary Order pursuant to sections 38, 63 and 67 in the amount of $725.00. The Tenant must serve the Monetary Order on the Landlord and this Order may be filed and enforced in the B.C. Provincial Court.

Conclusion

The Landlord failed to prove his claim for outstanding rent and damage to the rental unit. The Tenant is entitled to return of his security deposit in addition to the agreed upon sum of $200.00 in excess rent collected by the Landlord.

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 10, 2015

Residential Tenancy Branch