



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNSD, 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 damage; for a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail, although he does not recall the date of service. The Tenant acknowledged receiving these documents sometime in the summer of 2015, via registered mail. I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*.

On September 11, 2015 the Landlord submitted a CD to the Residential Tenancy Branch. The Agent for the Landlord stated that the CD was sent to the Tenant, via registered mail, although he does not recall the date of service. The Tenant acknowledged receiving the CD, via registered mail. I find that the CD was served in accordance with section 88 of the *Act* and it was accepted as evidence for these proceedings.

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

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent and damage to the unit?
Is the Landlord entitled to keep all or part of the security deposit?

Background and Evidence

The Agent for the Landlord stated that he is representing the individual who is the Landlord of the rental unit. The Tenant stated that she entered into a tenancy agreement with the individual being represented by the Agent for the Landlord.

The Tenant and the Agent for the Landlord agree:

- this tenancy began on December 01, 2013;
- the Landlord and the Tenant did not enter into a written tenancy agreement;
- the Tenant agreed to pay monthly rent of \$850.00 by the first day of each month;
- the Landlord did not attempt to schedule a time to complete a condition inspection report at the start of the tenancy;
- the tenancy ended on May 31, 2015; and
- the Tenant provided the Landlord with a forwarding address, in writing, sometime in June of 2015.

The Tenant stated that she paid \$2,125.00 at the start of the tenancy, which included a security deposit of \$1,275.00 and rent for the first month. The Agent for the Landlord stated that the Tenant paid \$1,275.00 at the start of the tenancy, which included a security deposit of \$425.00 and rent for the first month.

The Agent for the Landlord and the Tenant agree that:

- the Tenant was provided with a receipt for the security deposit and rent payment made at the start of the tenancy;
- the Landlord did not keep a copy of this receipt;
- the Tenant showed the Landlord the receipt at the end of the tenancy; and
- the Tenant provided the Landlord with a digital image of the receipt after the tenancy ended.

The Agent for the Landlord submitted a digital image of a receipt for a “damage deposit and pet deposit”.

The Agent for the Landlord stated that the receipt was altered after the receipt was issued without the knowledge of the Landlord and that the Landlord did not initial the amendment. The Tenant stated that the receipt was altered with the consent of the Landlord. She stated that she did not have a copy of the receipt with her at the time of the hearing, but she believes both she and the Landlord initialled the amendment.

In a text message dated November 24, 2014, the Tenant declared that she paid \$1,325.00 in “damage deposits”.

The Landlord is seeking compensation, in the amount of \$850.00, in unpaid rent for June of 2014. The Agent for the Landlord and the Tenant agree that no rent was paid for June of 2014.

The Tenant stated that rent was not paid for June of 2014 because the Landlord told her rent was not due for the month in an attempt to assist her with funeral expenses. The Agent for the Landlord stated that the Tenant was told her rent for June could be late due to the death of her mother, but the Landlord did not tell her rent was not payable for June of 2014.

The Landlord is seeking compensation, in the amount of \$100.00, for utility charges. The Agent for the Landlord stated that the Tenant agreed to pay 40% of all gas and hydro charges incurred during the tenancy. The Tenant stated that the Tenant agreed to pay 30% of all gas and hydro charges incurred during the tenancy.

The Landlord did not submit any copies of utility bills to support the claim of \$100.00.

The Landlord is seeking compensation, in the amount of \$400.00, for replacing the carpets. The Agent for the Landlord stated that the carpets needed to be replaced because they smelled of pet urine. The Tenant stated that she does not believe the carpets smelled of urine and she does not believe they needed to be replaced.

The Landlord submitted no evidence to establish the cost of replacing the carpets, which the Agent for the Landlord estimates were at least 7 or 8 years old.

Analysis

On the basis of the evidence before me, I find that the Tenant paid a security deposit of at least \$425.00.

I find there is insufficient evidence to establish that the Tenant paid a security deposit of \$1,275.00 as she alleges.

In determining that there is insufficient evidence to establish the Tenant paid a security deposit of \$1,275.00, I placed no weight on the receipt submitted in evidence because:

- the receipt has been altered;
- the Landlord does not acknowledge initialing the amendment on the receipt;
- no expert evidence was submitted to establish that the initials on the receipt were made by the Landlord; and
- the initials are not sufficiently similar to the Landlord's signature to cause me, from the perspective of a layperson, to conclude they were made by the same person.

In determining that there is insufficient evidence to establish the Tenant paid a security deposit of \$1,275.00, I considered the text message of November 24, 2014 in which the

Tenant declared that she paid \$1,325.00 in “damage deposits”. This text message contradicts the testimony of both parties at the hearing and does not, therefore, help to establish the amount paid. I also note that there is no response to that text in which the Landlord agrees to the Tenant’s declaration that she paid \$1,325.00.

Section 23 of the *Act* stipulates, in part, that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day and that the landlord must offer the tenant at least two opportunities, as prescribed, for the inspection. On the basis of the undisputed evidence, I find that the Landlord did not comply with section 23 of the *Act* because the Landlord did not attempt to schedule a time to jointly inspect the rental unit.

Section 24(2)(a) of the *Act* stipulates that a landlord’s right to claim against the security deposit or pet damage deposit for damage is extinguished if the landlord does not offer the tenant at least two opportunities to jointly inspect the rental unit, as is required by section 23(3) of the *Act*. As I have concluded that the Landlord failed to comply with section 23(3) of the *Act*, I find that the Landlord’s right to claim against the security deposit and pet damage deposit for damage is extinguished.

As the Landlord’s Application for Dispute Resolution includes a claim for unpaid rent, I find that the Landlord retains the right to claim against the security deposit for unpaid rent.

On the basis of the undisputed evidence, I find that the Tenant agreed to pay rent of \$850.00 by the first day of each month of the tenancy and that rent was not paid for June of 2014. I therefore find that the Tenant must pay the Landlord \$850.00 in rent for June of 2014.

When a tenant alleges that the landlord agreed to amend a term of a tenancy agreement, such as the requirement to pay rent for any given month, the burden of proving the agreement has been amended rests with the tenant. I find that the Tenant has submitted insufficient evidence to establish that the Landlord agreed the Tenant did not have to pay rent for June of 2014. In reaching this conclusion I was heavily influenced by the absence of evidence, such as an email or text message, that corroborates the Tenant’s submission that she did not have to pay rent for June of 2014.

I dismiss the Landlord’s claim for unpaid utilities, as the Landlord has not submitted any gas or hydro bills to support this claim. In the absence of the bills or independent evidence that established the amount of gas/hydro consumed, I am unable to conclude how much the Tenant owes.

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.

Even if I were to conclude that the carpets needed to be replaced because they smelled of urine, I would dismiss the Landlord's claim for replacing the carpet because the Landlord failed to clearly establish the cost of replacing the carpets. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlord's statement that it cost \$400.00 to replace the carpets. When receipts are available, or should be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to present the receipts.

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

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$900.00, which is comprised of \$850.00 in unpaid rent and \$50.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the security deposit of \$425.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$475.00. 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: December 10, 2015

Residential Tenancy Branch

