



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD, MNDC, MND, MNR, FF

Introduction

This hearing was originally convened on October 8, 2015, as the result of the landlord's application for dispute resolution under the Residential Tenancy Act ("Act"). The landlord applied for authority to keep all or part of the tenants' security deposit, for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation, alleged damage to the rental unit, and unpaid rent, and for recovery of the filing fee paid for this application.

The landlord/owner (hereafter "landlord") and tenants attended the original hearing, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and no party raised any issue regarding service of the evidence or of the landlord's application, with the exception of the last packet of evidence sent by the landlord to the tenants.

Thereafter the participants were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, and make submissions to me.

Due to the length of the original hearing, the hearing could not be completed and it was therefore adjourned. An interim Decision was issued, which is incorporated by reference herein. The landlord was directed to send their last packet of evidence to the tenants during the period of adjournment.

At the reconvened hearing held on December 18, 2015, the same parties attended the hearing and the hearing concluded on that date.

Both parties submitted an extensive amount of evidence in support of and in response to the landlord's application. I have reviewed all relevant oral, photographic, and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure ("Rules"); however, I refer to only relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to permanently retain the tenants' security deposit, further monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The landlord submitted that this one year, fixed term tenancy began on July 15, 2014, monthly rent was \$2500.00, and the tenants paid a security deposit of \$1000.00. The landlord stated she attended the rental unit on June 3, 2015, noticing that the tenants had vacated. The tenants submitted that they vacated the rental unit on June 1, 2015.

The landlord's monetary claim is as follows:

Lost rent	\$3759
Utilities due	\$338.39
Closet repair	\$771.62
Damaged property	\$7748.01
Unnecessary service calls	\$453.95
Filing fee	\$100.00
Photocopies	\$80.99

In support of their application, the landlord stated the following, while referring to their documentary and photographic evidence:

- The tenants failed to comply with the terms of the fixed term tenancy agreement, when they vacated the rental unit prior to July 15, 2015.
- The tenants gave inconsistent dates upon which they were leaving, preventing the landlord from making the planned repairs to the rental unit as they could not hire a contractor until assured that the premises were vacant.

- As a result of the tenants' breach of the fixed term tenancy agreement, the landlord is entitled to a loss of rent revenue for June and July 1-15, 2015, in the amount of \$3750.00.
- The tenants were responsible for utility payments, but failed to pay all that was due for the time they lived in the rental unit as they failed to cancel the services upon their departure.
- The tenants were given permission to build an armoire in the rental unit near the beginning of the tenancy, for which a \$200.00 reduction in monthly rent for September was granted, along with another deduction of \$71.62 granted in February 2015.
- The armoire was not functional and the rental unit had to be repaired, and therefore the landlord is entitled to reimbursement of the rent deductions along with \$500.00 for costs to repair.
- The tenants are responsible for the cost of a new washing machine, due to misuse of the existing washing machine, removal of the machine, the cost of a lawnmower and other lawn equipment, due to misuse, removal of yard waste left by the tenants, cost of a lock replacement, cost of a front door frame due to the tenants' actions, cost of structural repairs due to the tenants' actions, costs of garbage removal and cleaning, cost of a living room double sliding door and frame, cost of a refrigerator replacement, and cost toilet and sewage damage, all totalling \$7748.01.
- There has been no refrigerator replacement or repair of a toilet and sewage damage as of the date of the hearings.
- There was no move-in or move-out inspection report.
- The tenants are responsible for unnecessary service calls, such as for raccoons and rodents, when none were found, roof leaks when none were found, and for frivolous lack-of-heat complaints, in response to receiving a 10 Day Notice for Unpaid Rent.

The landlord's relevant evidence included, but was not limited to, approximately 113 pages of email transmissions between the parties, the written tenancy agreement, a summary of grievances with the tenants, with attached photographs, an extensive

summary of the claim for damages, citing documents with attached photographs, utility bills for the relevant time period, and copies of receipts.

In response to the landlord's application, the tenants stated the following, while referring to their documentary and photographic evidence:

- The decision to vacate early was made when the landlord informed them that she was listing the house for sale and would make renovations to the boiler and for asbestos removal.
- The tenants did their best to accommodate the landlord in moving out early for the planned renovations.
- The landlord approved the male tenant's request for an armoire build, to a semi-professional level, and the work improved the landlord's property.
- The tenants should not be responsible for all the power from the summer of original occupancy, as the landlord had workmen on the premises using power tools.
- The home was bought in foreclosure, there was work going on when the tenancy began, there was no move-in or move-out inspection, other than the refrigerator, all appliances were reconditioned, the appliances did break down, which is not a tenant responsibility, the home was left in better condition than at the start of the tenancy, and repairs were made by the tenants during the tenancy.
- Any complaints made about appliances, repairs, or rodents were legitimate, and they had no reason to make spurious complaints to the landlord, further iterating that it is the landlord's responsibility for such issues during a tenancy.
- The boiler was very old and it kept breaking down, the closet door would not close during the tenancy, and they had evidence that rodents were entering the rental unit.

The tenants' relevant evidence included, but was not limited to, copies of communication between the parties, copies of utility bills, and photographs.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party, the landlord in this case, has the burden of proof to substantiate their claim on a balance of probabilities.

Lost rent-

Section 45(2) of the Act states that a tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term.

In the case before me, I accept that the tenants ended the fixed term earlier than the end of the fixed term and I find the tenants were responsible to pay monthly rent to the landlord until the end of the fixed term, here, July 15, 2015, subject to the landlord's requirement that they take reasonable measures to minimize their loss.

In considering whether or not the landlord took reasonable steps to minimize their loss, I considered evidence submitted for the hearing that the landlord was issued an order of possession for the rental unit in April 2015, yet failed to act on the order. I also took into consideration that the evidence shows that no matter when the tenancy ended, at the end of May 2015 or the fixed term, the landlord planned on remediating the property to replace old fixtures, which substantiates that the landlord did not intend on advertising the rental unit to secure a subsequent tenant in order to prevent a loss of revenue. In fact, no evidence of advertising for new tenants was submitted.

Due to the above, in this instance, I find the landlord submitted insufficient evidence that they took reasonable steps to mitigate their loss of rent revenue.

As such, as I have found that the landlord has not complied with section 7(2) of the Act, I dismiss the landlord's claim for loss of rent revenue for June and July 1-15, 2015.

Utilities due-

I find that the landlord submitted sufficient evidence through her copies of the utility bills and through the written tenancy agreement that the tenants were responsible for hydro costs for the rental unit, that hydro costs were incurred during this tenancy for which they have not paid, and that therefore, the landlord is entitled to compensation, in the requested amount of \$338.30.

I grant the landlord a monetary award in this amount.

Closet repair-

After a review of the evidence, I find that the landlord agreed to the tenants installing or building an armoire in the rental unit, shown by her agreement for a rent reduction, and therefore I find the landlord has presented insufficient evidence to show why the tenants are therefore legally responsible for an agreement between the parties.

The landlord's claim is therefore dismissed.

Damaged property-

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

As to the landlord's claims against the tenants for damage to the rental unit and for cleaning costs, painting, and yard work, I find a critical component in establishing a claim for damage and cleaning, and the resulting expenses is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Act deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me, the undisputed evidence is that the landlord failed in her obligation under of the Act of conducting an inspection of the rental unit and completing the inspection reports at the beginning and the end of the tenancy.

I therefore could not assess the condition at the end of the tenancy compared with the beginning of the tenancy. Consequently, I could not determine whether any alleged damage by the tenants was above and beyond reasonable wear and tear, or if there was any damage or repairs needed at all caused by the tenant. I also found that the

landlord's photographic evidence was of no probative value as the photographs were taken at the end of the tenancy.

Due to the above, I find the landlord submitted insufficient evidence to support her monetary claim against the tenants for damaged property and the claim is dismissed.

Unnecessary service calls-

Under section 32 of the Act, A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and a tenant is not required to make repairs for reasonable wear and tear.

I have reviewed the landlord's evidence and find that they have not supported their claim on a balance of probabilities that the tenants made unnecessary requests for repairs of the landlord as I find the landlord it obligated under the Act to address reasonable requests of the tenants. For instance, a receipt provided by the landlord showed a service call to address heating, and work performed. There was no indication that the work was not necessary or caused by the tenants.

Due to the above, I find the landlord submitted insufficient evidence to support her monetary claim against the tenants for damaged property and the claim is dismissed.

Photocopies-

I find that there is no authority under the Act for the reimbursement of expenses related to disputes arising from tenancies other than the filing fee as allowed under section 72(1) of the Act. I therefore dismiss the landlord's claim for these expenses.

As the landlord was partially successful with their monetary claim, I grant them recovery of a partial filing fee of \$50.00.

Due to the above, I find the landlord is entitled to a total monetary award of \$388.30, comprised of unpaid utilities of \$338.30 and a partial filing fee of \$50.00.

I direct the landlord to retain the amount of \$388.30 from the tenants' security deposit of \$1000.00 in satisfaction of their monetary award and order the landlord to return the balance of the tenants' security deposit, or \$611.70, immediately.

To give effect to this order, I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of the balance of their security deposit of \$611.70, which is enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants this amount without delay, the monetary order must be served upon the landlord for enforcement, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

I have not ordered that the tenants' security deposit be doubled, under section 38 (1)(2) and (6), as the landlord filed their application not only claiming for damages to the rental unit, but also for loss of rent revenue.

Conclusion

The landlord's application was minimally partially successful as they were granted a monetary award of \$388.30.

The landlord is ordered to return the balance of the tenants' security deposit, immediately, and the tenants are granted a monetary order in the amount of that balance of \$611.50 in the event the landlord does not comply with this order.

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 30, 2015

Residential Tenancy Branch

