



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ewald Rentals
and [tenant name suppressed to protect privacy)

DECISION

Dispute Codes:

OPN, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession, compensation for unpaid rent and damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The parties confirmed the tenancy ended effective August 31, 2015. An Order of possession is not required.

The tenant confirmed receipt of the landlord's application in August 2015. On January 8, 2016 the tenant made an evidence submission to the landlord, sent via registered mail. The landlord received the notice of registered mail card several days prior to the hearing but did not pick the mail up. Section 3.11 of the Rules of Procedure requires a respondent to serve the applicant with evidence not later than seven days prior to a hearing. Registered mail is deemed served on the 5th day after mailing; therefore, even if the mail were deemed to have been received I find it would have been given one day late.

Therefore, the tenant's evidence was set aside. The tenant was at liberty to provide testimony in relation to his written submission.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$980.00 for loss of rent revenue?

Is the landlord entitled to compensation in the sum of \$826.00 for cleaning and repairs to the rental unit?

May the landlord retain the security deposit?

Background and Evidence

The tenancy commenced on November 1, 2006, rent was \$980.00 per month due on the first day of each month. On October 1, 2006 a security deposit in the sum of \$390.00 was paid. A copy of the tenancy agreement was supplied as evidence.

A move-in condition inspection report was not completed.

The landlord does not know the age of the fixtures in the rental unit.

There was no dispute that the landlord received and accepted written notice ending the tenancy effective July 31, 2015. The tenant said he gave the landlord notice when he paid his rent, by placing the notice with his rent payment into the payment box at the office in the rental building.

The landlord said that their agent told her they did not receive the notice until July 2, 2015 and that the notice was late. During the hearing the landlord said they accepted the late notice to end the tenancy effective July 31, 2015 but were unable to rent the unit as it needed too much work to clean and prepare it for new tenants. The rental unit, six months later, has not been rented.

The landlord and tenant agreed that they were to meet to complete a move-out inspection. The landlord said they were to meet at 11 a.m. on July 31, 2015. The landlord arrived 10 minutes late but the tenant had already left. The landlord said the tenant was provided with a "cleaning sheet" after he gave notice and that sheet provided a date and time for the inspection. A copy of this sheet was not supplied as evidence.

The tenant said that earlier in the morning on July 31, 2015 he called the landlord to confirm the inspection at 10 a.m. The landlord's husband, the owner of the building, told the tenant that since the tenant had been subletting his unit he would be receiving his security deposit back. The landlord did not confirm they would meet to complete the inspection. The tenant said that after speaking with the landlord he understood they had no intention of returning his deposit.

The parties agreed that the tenant provided a written note to the landlord on August 6, 2015, requesting return of the security deposit to a forwarding address. Within several days the landlord made the application for dispute resolution.

The landlord had the carpets professionally cleaned on September 7, 2015 and again on October 13, 2015. The landlord said they were busy doing repairs to the unit so the cleaning was delayed. The carpets did not come clean the first time so they were cleaned again. The tenant had cats and smoked, so the carpets were dirty.

The landlord supplied an October 14, 2015 invoice in the sum of \$376.30 for what she explained was two bi-fold doors. The invoice is not detailed, but is issued by a major home supply company, as a deposit of some sort. No item is identified on the invoice, issued for a single, unidentified quantity. The living room bi-fold had a small hole that could not be repaired and another bi-fold was damaged by what appeared to be scratches caused by a cat. Both doors were replaced. An October 15, 2015 receipt was issued by the landlord's company in the sum of \$41.00 for door installation.

The living room blinds were missing at the end of the tenancy. An August 19, 2015 invoice in the sum of \$43.68 was supplied as evidence of purchase of a new blind. The invoice referenced

“al step” as the item purchased. The landlord said this was the blind; I asked if it was for an aluminium stepladder.

The landlord has claimed the loss of August 2015 rent revenue as the unit required so much cleaning that they did not have time to locate a new tenant during that month. The landlord supplied photographs that show the unit in need of some cleaning. The stove, oven, some flooring and bathroom needed cleaning. Photos show some hairs in a baseboard heater, marks by the bathtub, stains in the toilet and bathtub and flooring. The landlord submitted an invoice issued by the landlord on August 4, 2015 as proof of payment to the landlord in the sum of \$176.00 for cleaning of the unit.

The tenant responded that he gave adequate notice to end his tenancy and that when the landlord said they had not received the notice with his July rent payment, he was not surprised. The tenant does not believe the landlord did not receive his rent payment before the end of the month.

The tenant said that the carpets were clean when he moved out and that he had his own carpet cleaner which he used on a regular basis as he had cats.

The living room bi-fold door had a mirror on it at the start of the tenancy. These doors are hollow, with cardboard interiors. The mirror eventually fell off the door and the hole that was behind that mirror was exposed. The tenant then mounted the mirror on the wall, where it remained when he vacated. The tenant said he does not know how the other door was damaged.

When the tenant moved into the unit there were no living room blinds.

The tenant said that after he spoke with the landlord on the morning of July 31, 2015 he did cease further cleaning as he felt no matter what he did the landlord was not going to return his deposit.

The landlord then said that in fact the tenant had called her on the morning of July 31, 2015, not her husband and that she had talked to the tenant about the inspection. I asked the landlord why she had excluded this detail from her testimony earlier in the hearing, as this was a critical point of dispute linked to her claim. The landlord had no explanation.

The tenant's advocate responded to the dates on the invoices, pointing out the dates did not make sense, given the tenancy ended on July 31, 2015. This was a nine year tenancy, the building is extremely old. The tenant left the unit in a rentable state. The landlord had asked to show the unit to prospective tenants and would not have done so if she felt it was not rentable.

The unit was not painted at any time during the tenancy and the tenant said the only repair made was to a window and the fridge was replaced.

Analysis

First I have considered the end date of the tenancy. During the hearing the landlord said they were requesting compensation for loss of August 2015 rent, not because of late notice, but because they needed to clean the unit and it could not be completed within the time that would allow a new tenant to take possession.

Therefore, based on the testimony of the parties I find, pursuant to section 44(f) of the Act that the tenancy ended by agreement, effective July 31, 2015.

Section 37(2) of the Act provides:

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property. The Act requires a landlord to give a tenant at least 2 opportunities to complete a final condition inspection; the final opportunity must be in writing. The landlord did not submit any evidence of the time that had been agreed upon to complete the inspection, such as the sheet she referenced. I found the tenant's testimony more forthright on this point.

When the landlord initially gave testimony she said that the tenant was to meet her at 11 a.m. on July 31, 2015; she did not provide any indication she had actually talked to the tenant earlier in the day. It was only after the tenant said he spoke to the landlord's husband on July 31, 2015 that the landlord testified that it was she who had talked to the tenant earlier in the day, not her husband. As a result of this critical omission from the landlord's initial testimony, I found the landlord's testimony in relation to the events that occurred on July 31, 2015 inconsistent and prefer that of the tenant, as more reliable.

From the evidence before me I find that the photographs show the need for some cleaning to the rental unit. The photos show fixtures that are clearly very aged; the toilet and bathtub are blue, worn and stained; which point more to wear and tear as the result of age rather than something that could be addressed by cleaning. The evidence showed the need for some floor, sink and stove and oven cleaning. Therefore, I find, on the balance of probabilities that a reasonable sum for cleaning costs is \$50.00. The balance of the claim for cleaning is dismissed.

I find the dates for carpet cleaning fall well outside of the end date of the tenancy. If the landlord had intended to complete what I find was a minimal amount of cleaning to the unit for new tenants it makes sense that the carpets would have been cleaned immediately following the end of the tenancy. This would have supported the landlord's contention that they had suffered a loss of rent revenue as the landlord was required to mitigate any loss by making repairs and complete cleaning in a timely manner. I cannot rely on invoices issued on September 7 and October 13, 2015 as they post-date the tenancy beyond what I find is a reasonable period of time. Therefore, I find that the claim for carpet cleaning is dismissed.

In the absence of a move-in condition inspection report I find it is just as likely that there were no blinds in the living room at the start of the tenancy. Therefore, I dismiss the claim for blind replacement.

The landlord has claimed replacement of bi-fold doors without providing any proof of their life span. I found the tenant's detailed testimony in relation to the mirror that had been installed on a hollow door rang true. Further, the invoice for the doors indicated only 1 item, not two, was purchased and that item is not identified. Therefore, in the absence of information of the age of

the doors, the state of the doors at the start of the tenancy and the absence of proper verification of the purchase made, I find that the claim for the doors and installation is dismissed.

In relation to the loss of rent revenue I find that the landlord has failed to prove they took steps to mitigate the loss claimed by completing the small amount of cleaning and minor repairs in a timely fashion. No evidence of attempts to locate new tenants was supplied as evidence. Further, the landlord did not dispute that the rental unit had not been painted in nine years. I find that if there was a delay in re-renting the unit it is just as likely that delay was due to the need for painting and other repairs as the result of normal wear and tear. Therefore, I find that the claim for loss of rent revenue is dismissed.

Residential Tenancy Branch policy suggests that when a landlord applies to retain the deposit, any balance should be ordered returned to the tenant; I find this to be a reasonable stance.

The deposit has accrued interest in the sum of \$12.31, for a total value of \$402.43.

As the landlord's application has some merit I find the landlord is entitled to recover the \$50.00 filing fee costs.

Therefore, I find that the landlord is entitled to retain \$100.00 from the tenant's security deposit.

Therefore I find that the tenant is entitled to return of the balance of the security deposit in the sum of \$302.31.

Based on these determinations I grant the tenant a monetary Order in the sum of \$302.31. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to compensation the sum of \$50.00 for cleaning. The balance of the claim is dismissed.

The landlord is entitled to filing fee costs.

The landlord may deduct \$100.00 from the security deposit and interest held in trust.

The landlord is ordered to return the balance of the security deposit plus interest to the tenant. The tenant has been issued a monetary 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: January 21, 2016

