Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD, FF

Introduction

On October 2, 2015, the Landlord submitted an Application for Dispute Resolution requesting a monetary order for unpaid rent; to keep all or part the security deposit; and to recover the cost of the filing fee.

The matter was set for a conference call hearing at 9:00 a.m. on May 24, 2016. Both parties attended the hearing. 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.

I have reviewed all oral and written evidence before me. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

The Tenant testified that she moved out of the rental unit on September 30, 2013, and that she received paperwork from the Landlord dated October 6, 2015, which is outside of the two year period that the Landlord has to make a claim. The Tenant testified that she sent the Landlord emails that she moved out on September 30, 2013. The Tenant submits that the Landlord was not around to do the inspection until the October 16, 2013.

The Tenant provided documentary evidence of email exchanges between herself and the Landlord as follows: (summarized)

> On September 29, 2013, The Tenant wrote the Landlord and provided her new address for mail.
>
> On September 30, 2013, the Landlord responded asking if the address was the Tenants actual address or a mailing address, and to put the hoses under the trailer, and that he will be off work to come do the outward condition report this coming Saturday. On September 30, 2013 the Tenant responded by stating *I cleaned the house today. I will go back tomorrow and put the hose under the trailer where you want it*. .

> On October 5, 2013 the Landlord wrote the Tenant regarding a stain on the living room carpet. The Tenant responded on October 6, 2013, stating that all the carpets were steam cleaned on the 30th of September when she moved out.

The Landlord has provided a written submission that states the Tenant was not out at the end of September, her clean-up was not complete and she had not even terminated utility services. The Landlord submits that the Tenant signed and dated the condition inspection report on October 16, 2013. The Landlord has also provided a copy of the email exchange on October 6, 2013 between the Tenant and himself where the Tenant states that all the carpets were steam cleaned on the 30th of September when she moved out.

Section 60 of the Act states:

> *If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.*
> *(2) Despite the Limitation Act, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).*
> *(3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.*

Section 44 of the Act states that a tenancy ends if the Tenant vacates or abandons the rental unit.

Section 2.6 of the Residential Tenancy Branch Rules of Procedure states that the Application for Dispute Resolution has been made when it has been submitted and the fee is paid or all documents for a fee waiver are submitted to the residential tenancy Branch directly through a Service BC office.

I am not persuaded by the Landlords submissions that the Tenant was not out of the rental unit on September 30, 2016. Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Tenant vacated the rental unit on September 30, 2016.

While the Tenant may have been responsible for other obligations under the tenancy agreement, or the Act, the tenancy ended on September 30, 2016, when the Tenant vacated the rental unit. I do not find that the tenancy continued past September 30, 2013, due to the Landlord not being available to perform a move out inspection until mid-October, or due to the date the Tenant cancelled her utility services.

The Landlord made application for dispute resolution on October 2, 2015. Pursuant to section 60 of the Act, the Landlord's application was made not made within the 2 years of September 30, 2015, the date the tenancy ended.

The Landlord's application is dismissed without leave to reapply.

Residential Tenancy Policy Guideline #17 Security Deposit and Set off states that an Arbitrator will order the return of a security deposit on a Landlord's application to retain all or part of the security deposit unless the Tenant's right to the return of the deposit has been extinguished under the Act. Documentary evidence of a Condition Inspection Report indicates that the Tenant agreed that the Landlord could keep the security deposit on October 16, 2013.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord's application was not successful, I decline an award for recovery of the filing fee.

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: June 08, 2016

Residential Tenancy Branch