



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MND, MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”).

The Landlord filed an Application requesting to recover unpaid rent and /or utilities; for compensation for damage to the unit; for compensation for damage or loss under the Act; to keep all or part of the security deposit or pet deposit; and to recover the cost of the filing fee.

The Tenant filed for a monetary order for money owed or compensation for damage or loss under the Act, and for a monetary order for double the security deposit.

Both parties appeared at the hearing. The Tenant was assisted by her Advocate S.B.. The hearing process was explained and the participants were asked if they had any questions. All participants in the hearing 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 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

- Is the Landlord entitled to the monetary relief sought for unpaid rent?
- Is the Landlord entitled to monetary relief for damage to the unit?
- Is the Landlord entitled to recover the cost of the filing fee?
- Is the Tenant entitled to the return of double the security deposit?
- Is the Tenant entitled to other compensation under the Act or tenancy agreement for overpayment of rent?

Background and Evidence

The Parties testified that the tenancy began on August 1, 2018, as a one year fixed term tenancy that continued thereafter as a month to month tenancy. Rent in the amount of \$1,043.00 was due on the first day of the month. The Tenant paid the Landlord a security deposit of \$500.00.

May 2014, Rent

The Landlord testified that the Tenant did not give the Landlord proper Notice to end the tenancy. The Landlord testified that \$1,043.00 was taken from the Tenant's account because of insufficient notice to end the tenancy from the Tenant.

The Tenant testified that on March 30, 2014, she went to the Landlord's office to submit written notice to end the tenancy. She states that the Landlord was not around and she was not able to contact the Landlord by telephone. She tried to hand the written notice to end tenancy to a worker, or maintenance person, but they would not take the notice.

The Tenant submits that she moved out on April 30, 2014, and met with the Landlord on May 2, 2014, where the Landlord asked her to sign a document that was prepared by the Landlord. The document dated May 2, 2014, states the Tenant gives Notice to vacate her unit effective the end of April, 2014. The Tenant's advocate suggests that the notice to end tenancy that the Landlord had her sign could be considered a mutual agreement to end the tenancy.

The Tenant testified that after she moved out the Landlord processed a pre-authorized payment and withdrew \$1,043.00 from her account for May 2014, rent.

The Tenant is seeking a monetary order for \$1,043.00 for over payment of rent.

Section 45 of the *Act* states that a Tenant may end a periodic tenancy by giving the Landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the Landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Carpet Cleaning

The Landlord is claiming \$157.50 for carpet cleaning. She referred to the documentary evidence of a receipt for carpet cleaning and submits that there was a urine smell on the carpet and the carpet needed to be sanitized.

The Tenant testified that she washed the carpets before she moved out using a carpet cleaning machine she borrowed from a friend.

Cleaning and Materials

The Landlord is claiming \$216.00 for cleaning and materials. The Landlord testified that the rental unit required 4.5 hours of cleaning at the cost of \$40.00 per hour and an additional 20% for cleaning materials.

The Landlord was not able to identify what in the rental unit needed cleaning, and did not provide any photographic evidence showing the condition of the rental unit.

In reply, the Tenant testified that the Landlord told her that there would be no move out inspection because the Landlord was planning to renovate the rental unit.

Repairs

The Landlord is claiming \$130.76 for repairs to the rental unit. The Landlord testified that the kitchen shelf, linen closet, and kitchen light cover needed to be replaced.

In reply, the Tenant testified that the Landlord told her that there would be no move out inspection because the Landlord was planning to renovate the rental unit.

Security Deposit

The Tenant's advocate submits that at the end of the tenancy the Landlord did not complete a move out inspection. The advocate states that the Landlord conducted a move in inspection, but told the Tenant that they were renovating the rental unit and did not need to conduct a move out inspection. The advocate states the Tenant did not agree that the Landlord could keep the security deposit. The Tenant's advocate submits that the Tenant provided the Landlord with a written letter dated June 3, 2014, asking for the return of the security deposit and provided the Landlord with her forwarding address.

Documentary evidence of a condition inspection report shows that a move in inspection was conducted on June 26, 2008. The condition inspection report shows a move out inspection was conducted on May 5, 2014. The move out inspection report is not signed by the Tenant.

The Tenant testified that she signed the move in inspection but submits there was no move out inspection.

In reply, the Landlord testified that she has no response to most of the Tenant's testimony regarding the move out inspection because she was not working as an agent for the Landlord at the time.

The Tenant is seeking the return of double the security deposit in the amount of \$1,000.00.

Section 35 of the *Act* requires a Landlord and a Tenant at the end of a tenancy to inspect the condition of the rental unit. The Landlord must offer the Tenant two opportunities for the inspection. The Landlord must complete a condition inspection report in accordance with the

regulations. The Landlord may make an inspection and complete and sign the report without the Tenant if the Landlord has offered two opportunities for the inspection and the Tenant does not participate on either occasion.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

Security Deposit

The Tenants testimony that the Landlord told her that a move out inspection was not needed was unopposed by the Landlord. The Landlord stated she did not know because she did not work there at the time. I find that the Landlord's right to claim against the security deposit for damage is extinguished due to non-compliance with section 35 of the Act.

The Tenant provided her forwarding address in a letter dated June 3, 2014. I find that the Landlord received the Tenant's written forwarding address. When the Landlord received the Tenant's written forwarding address, the Landlord was required to make application to claim against it, or return the deposit, in full within 15 days as required by section 38(1) of the Act. There is no evidence before me that the Landlord applied to keep the deposit prior to this hearing and the Tenant did not agree that the Landlord could keep it. Therefore, according to Section 38 of the Act, I am required to double the amount of the deposit. I find, pursuant to section 38(6) of the Act, the Landlord owes the Tenant double the security deposit in the amount of \$1,000.00.

May 2014, Rent

I find that the Tenant did not provide the Landlord with proper notice to end the tenancy as required by section 45 of the Act. There is insufficient evidence that the worker or maintenance person that The Tenant tried to hand the notice to end tenancy to was an agent of the Landlord.

There was no evidence that the Landlord was able to rent the unit out for part of the month of May 2014. Therefore I find that the Tenant is responsible to pay the rent for May 2014.

The Tenants claim for \$1,043.00 for an over payment of rent is dismissed.

The Landlord has the right to keep the \$1,043.00 that they withdrew from the Tenants account for May 2014 rent.

Condition Inspection Report

Section 21 of the Residential Tenancy Regulations states that in dispute resolution proceedings, a condition inspection report is evidence of the state of repair and condition of the rental unit or

residential property on the date of the inspection, unless either the Landlord or the Tenant has a preponderance of evidence to the contrary.

I give no weight to Landlord's evidence that the condition inspection report (the report) is evidence of the state of repair state of the rental unit. The report is dated May 5, 2014, which is after the Tenant moved out. The Tenant's testimony that the Landlord did not want to conduct a move out inspection was unopposed by the Landlord. There is no evidence that the Landlord offered the Tenant opportunities for the inspection and the report does not contain a signature of the Tenant for the move out inspection.

Carpet Cleaning

The Landlord is seeking \$157.50 for carpet cleaning.

The Landlord has provided a receipt for carpet cleaning but did not provide any other evidence to support her claim that the carpets required cleaning.

The Tenant testified that she washed the carpets. I find that the Landlord has provided insufficient evidence to support the claim. The Landlord's claim for carpet cleaning is dismissed.

Cleaning and Materials

The Landlord is claiming \$216.00 for cleaning and materials.

The Landlord has provided a receipt for cleaning and materials but did not provide any other evidence to support her claim that the rental unit required cleaning.

The Tenant testified that the Landlord told her that there would be no move out inspection because the Landlord was planning to renovate the rental unit. I find that the Landlord has provided insufficient evidence to support the claim. The Landlord's claim for cleaning and materials is dismissed.

Repairs

The Landlord is claiming \$130.76 for repairs to the rental unit. The Landlord was unable to provide information regarding the specifics of the repairs, regarding whether the repairs were required due to damage by the Tenant or by normal wear and tear. I find that the Landlord has provided insufficient evidence to support the claim. The Landlord's claim for \$130.76 for repairs is dismissed.

Monetary Awards

I find that the Tenant is responsible to pay the rent for May 2014. The Landlord testified that the amount of \$1,043.00 was previously taken from the Tenant for May 2014, rent.

I find that the Landlord owes the Tenant \$1,000.00 for double the return of the security deposit. I grant the Tenant a monetary order in the amount of \$1,000.00. The order must be served on the Landlord and may be enforced in the Provincial Court.

As to the recovery of the filing fees the parties paid for the Applications for dispute resolution, I find both parties were equally successful with their applications, and therefore I do not award compensation for their filing fees.

Conclusion

The Tenant failed to end the tenancy in accordance with the *Act*. The Landlord failed to return the security deposit within 15 days.

The Landlord can keep the amount of \$1,043.00 previously taken from the Tenant for May 2014, rent.

I find the Landlord owes the Tenant \$1,000.00 for double the return of the security deposit.

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: July 14, 2016

Residential Tenancy Branch