



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNR, MNSD

Introduction

This is an application brought by the Landlord requesting a monetary order in the amount of \$778.88, requesting an order for recovery of the \$100.00 filing fee, and requesting an order to retain the full security deposit of \$250.00 towards the claim.

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties and the witness the opportunity to give their evidence orally, and the parties were given the opportunity to ask questions of the other parties and the witness.

All parties were affirmed.

Issue(s) to be Decided

The issue is whether or not the applicant has established monetary claim against the respondent, and if so in what amount.

Background and Evidence

The parties agree that this tenancy began on February 2, 2016 with a monthly rent of \$500.00 due on the first of each month.

The parties also agree that the tenant paid a \$250.00 security deposit on February 14, 2016.

The parties also agree that the tenant vacated the rental unit on May 23, 2016.

The landlord testified that the tenant gave no Notice to End Tenancy and as a result he lost the full rental revenue for the month of June 2016, in the amount of \$500.00.

The landlord further testified that he is been unable to re-rent the unit because, he believes this tenant reported him to the City of Nanaimo, and the city is now saying this unit does not comply with the city bylaws.

The landlord further testified that when the tenant moved into the rental unit there was a brand-new memory foam mattress in the rental unit, and, when the tenant vacated the rental unit, he took that mattress with him, and replaced it with an old used mattress.

The landlord is therefore requesting a monetary order as follows:

June 2016 lost rental revenue	\$500.00
Missing mattress	\$278.88
Filing fee	\$100.00
Total	\$878.88

The landlord further requests that he be allowed to keep the full security deposit of \$250.00 towards this claim, and requests that a monetary order be issued for the balance.

The tenant testified that he was forced to move from the rental unit because he was assaulted by a new tenant that the landlord had moved into the rental unit, and that he still has a scar on his face from that assault.

The tenant further testified that, to escape the assaulting tenant, he locked himself and his room, and the other tenant attempted to kick his door down.

The tenant therefore testified that he felt he had no option but to vacate the rental unit for his own safety, as the landlord was not evicting the other tenant.

The tenant also testified that there was never a memory foam mattress in his rental unit, only a boxspring mattress, and that is the mattress he left behind when he vacated.

The tenant is therefore requesting that the landlord's full claim be dismissed.

The landlords witness testified that she was with the landlord when the memory foam mattress was put into the rental unit at the beginning of the tenancy, and it was brand-new, she even helped the landlord take off the plastic covering.

The landlords witness further testified that she was also with the landlord after the tenant vacated, and at that time, when the covers were removed from the bed, they discovered that the memory foam mattress had been replaced with an old mattress.

In response to the tenant's testimony the landlord testified that the tenant was assaulted by the new tenant he put into the rental property, however she informed him that the reason she assaulted the tenant was because he accused her of theft, and was going through her purse.

Analysis

It is my decision that I will not allow the landlords claim for lost rental revenue because, although the tenant may not have given the proper notice to end this tenancy, the tenant cannot be held liable for the loss rental revenue because the reason the unit has not been re-rented is because it does not meet city bylaws. Had this unit complied with city bylaws, the landlord may have been able to re-rent it and therefore there's a possibility he would not have lost any rental revenue.

I will however allow the majority of the landlords claim for the missing mattress, as it is my finding that the landlord has met the burden of proving that there was a new memory foam mattress in the rental unit at the beginning of the tenancy. The landlord has testified that there was a new memory foam mattress, and the landlords witness has also provided direct testimony that supports this claim. Further both the landlord and the witness have given direct testimony that, at the end of the tenancy, the memory foam mattress had been switched for an older mattress.

I do not accept the tenants claim that there was no memory foam mattress in the rental unit at the beginning of the tenancy, and I find it most likely that he did remove the memory foam mattress and replace it with an older mattress, at some point during the tenancy.

Although this mattress was brand-new at the beginning of the tenancy, I must allow for some depreciation over the term of the tenancy and therefore the amount I will allow for this mattress is the \$250.00 the landlord is holding has a security deposit.

Conclusion

Pursuant to section 67 of the Residential Tenancy Act I have allowed \$250.00 of the landlords claim and I therefore order that the landlord may retain the full security deposit of \$250.00 in satisfaction of this claim.

The remainder of the landlords claim is dismissed without leave to reapply.

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 25, 2016

Residential Tenancy Branch