



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's application: MNDC
Landlord's application: MNSD, FF

Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The tenant applied for a monetary award and the landlord applied for an order to retain a portion of the tenant's security deposit. The hearing was conducted by conference call. The tenant and the landlord called in and participated in the hearing. The landlord's manager also participated with the landlord.

Issue(s) to be Decided

Is the tenant entitled to a monetary award and if so, in what amount?

Is the landlord entitled to an order to retain a portion of the security deposit?

Background and Evidence

The rental unit is an apartment in Nanaimo. The landlord testified that the tenancy began on October 1, 2015. The monthly rent was \$750.00 and the tenant paid a security deposit of \$375.00 at the start of the tenancy. The landlord testified that the tenancy was for a one year fixed term. Neither the landlord nor the tenant submitted a copy of a tenancy agreement. The tenant disputed the landlord's testimony that there was a fixed term tenancy. She said that the landlord signed an "intent to rent" form, but not a fixed term tenancy agreement.

The tenant testified that on November 13, 2015 she gave written notice to end the tenancy effective December 31, 2015. She said in her letter: "I realize that I did make a number of nail holes due to number of art pieces that I have. If I could buy the plaster and plaster them on my own instead of bothering (B and C) that would be fine."

The tenant said she moved out before December 31, 2015. She returned the keys to the building manager on December 30, 2015. The tenant said that she did not

participate in any move-out inspection with the building manager. She was not asked to make an inspection or to sign any documents. She handed over the keys and gave the landlord a paper with her forwarding address written on it. The tenant said she left the rental unit properly cleaned,

The landlord's representative testified that the tenant gave a written notice to end the tenancy, but later withdrew it and said that her plans had fallen through and she would not be moving out on December 31, 2015. Later she confirmed that she would be moving out at the end of December.

The landlord said the rental unit was not properly cleaned and the building manager billed for cleaning, repairs and painting work in the amount of \$200.00. The landlord also said that he lost a half months' rent because he was unable to re-rent the unit until January 15, 2015. The landlord did not claim for lost rent although he said that the tenant was in breach of her fixed term tenancy agreement.

The tenant acknowledged that she did withdraw her notice to end the tenancy that she gave on November 13th, but she said she gave another written notice on November 30th saying that she would move by December 31st.

The tenant said she contacted the landlord before she filed her application for dispute resolution in an effort to resolve matters. She said the landlord refused to return her deposit, but did return \$175.00 by direct deposit to her bank.

The tenant said that she was claiming with respect to other matters besides her deposit. She referred to a typed list of complaints included with her documents; she complained that the landlord's staff came to her door several times during the brief tenancy without giving 24 hours' notice. The tenant claimed that the landlord committed fraud by cashing a rent cheque and then requesting a second payment for the same period. She said the RCMP were called to the building several times to settle disputes. She complained that she had problems with red ants and mice on her balcony. She also complained that the washer and dryer in the building were very expensive and did not work properly. The tenant did not submit any supporting documents with respect to any of these complaints.

Analysis

The tenant submitted her application for dispute resolution on January 13, 2016, less than 15 days after the tenancy ended. She has claimed payment of the sum of \$750.00, which happens to be double the amount of the security deposit that she paid at the beginning of the tenancy, although she said she was seeking compensation as

well for the complaints she had during the tenancy. The tenant's complaints about events during the tenancy may have justified her in making a complaint or seeking a remedy during the tenancy, but without particulars of loss or any substantiating evidence, these mere allegations are insufficient to support an award of compensation for loss of quiet enjoyment of the rental unit after the tenancy has ended.

The landlord confirmed that he had a conversation with the tenant before he filed his application on December 14th. He returned the sum of \$175.00 to the tenant on or about December 14th. In his application the landlord claimed the sum of \$200.00 pursuant to an invoice from his building manager for the costs of cleaning, drywall repairs and painting. Although the landlord said that the tenant signed a fixed term tenancy agreement, he did not claim any amount for loss of revenue and he did not submit a copy of the tenancy agreement. Because there is no claim for loss of revenue, I find that it is unnecessary to make a finding on disputed evidence as to whether or not there was a fixed term tenancy. The evidence confirmed that despite a change of mind after giving notice, the tenant did provide a month's notice in writing before she moved out.

There is conflicting evidence about the tenant's participation in a move out inspection. Apart from an invoice and a copy of the condition inspection, the landlord did not submit evidence, such as photographs to show the condition of the rental unit at the end of the tenancy. The tenant did note in her notice letters to the landlord that there was drywall damage that needed patching and I accept the landlord's evidence from the building manager, supported by details in the condition inspection report as confirmation that the rental unit was not left in a properly cleaned and acceptable condition at the end of the tenancy. I find that cleaning repairs and painting was required and that the invoiced amount of \$200.00 charged by the landlord was reasonable in all the circumstances.

I allow the landlord's application for compensation in the amount of \$200.00 and I order that the landlord retain the said sum from the security deposit. The balance of \$125.00 has been returned to the tenant. I do not award the landlord a filing fee for this application because he did not provide documentary evidence that should have been supplied, such as a copy of the tenancy agreement.

The tenant's application for compensation, including an order for the return of her security deposit is dismissed without leave to reapply. The landlord did return a portion of the deposit and did apply to retain the deposit within 15 days of the end of the tenancy.

Conclusion

The tenant's application has been dismissed. The tenant has received a portion of her deposit and the landlord has been authorized to retain the sum of \$200.00 in full and final satisfaction of his claim.

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: August 08, 2016

Residential Tenancy Branch