



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing convened as a result of cross applications filed by the parties wherein they sought monetary compensation from the other.

Both parties appeared at 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 make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

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

1. Are the Landlords entitled to monetary compensation from the Tenant?
2. Is the Tenant entitled to monetary compensation from the Landlord?
3. What should happen with the Tenant's security deposit?
4. Should either party recover the filing fee paid for their respective applications?

Background and Evidence

S.S. testified on behalf of the Landlords. She stated that the Tenant agreed to rent the rental unit without viewing it and then breached the tenancy agreement when he refused to move into the rental unit. S.S. further stated that she repeatedly offered him an opportunity to view the rental unit and he stated he was satisfied with the photos which were posted on a popular buy and sell internet site and did not need to view the rental unit prior to his occupancy date.

S.S. further testified that this fixed term tenancy was set to begin on February 15, 2016 with monthly rent payable in the amount of \$1,250.00. She stated that the Tenant provided a security deposit in the amount of \$625.00 as well as paying for the February 2016 half a month's rent in the amount of \$625.00.

Introduced in evidence was a copy of the tenancy agreement signed on January 14, 2016. S.S. stated that the Tenant attended their personal residence and signed the tenancy agreement and provided a security deposit and half a month's rent on that date.

S.S. testified that the day the Tenant was set to move in (February 15, 2016) he stated that the rental unit was not cleaned to his expectations, and advised the Landlords he would not be moving in.

S.S. testified that the Landlords immediately tried to minimize their loss by advertising the unit and that the rental unit was re-rented as of April 1, 2016. Introduced in evidence were copies of emails and text messages between the Landlords and prospective tenants regarding the potential rental of the rental unit.

The Landlords seek authority to retain the half a month's rent payment already received for February 2016. They also seek compensation for a full month's rent for March 2016 for a total of \$1,250.00 in addition to \$100.00 for the filing fee.

The Tenant also testified on his own behalf. He confirmed he claimed the sum of \$1,875.00 representing return of the amounts he paid for half of February in the amount of \$625.00, as well as double the security deposit. He stated that his basis for requesting double the security deposit was that he "had to find a new place" and had to wait to have his money returned.

The Tenant also testified that he wanted to see the rental unit prior to the start of the tenancy but the Landlords told him that he was not able to view the rental because the

unit was “occupied”. He further stated that he agreed to rent the unit provided that it was “clean” on the day he moved in as he was satisfied with the photos posted online.

The Tenant further testified that the first time he was able to view the rental unit was the day he moved in. He said the unit was a “complete disaster”, had feces on the carpet and smelled of cat urine.

The Tenant further stated that on February 15, 2016, the date he was set to move in, the Landlords refused to give him a key, told him that he had to leave and escorted him out of the rental unit. The Tenant stated that the Landlords refused his request to let him move in and told him that he “lost his opportunity to rent their beautiful home”. The Tenant also stated that the Landlord refused to return the funds paid.

In reply the Landlord, S.S., stated that the Tenant did not want the keys and refused to stay in the rental unit and that in doing so he breached the contract first.

O.W. also testified on behalf of the Landlords. He stated that the Landlords offered the Tenant multiple opportunities to view the rental unit and the Tenant simply refused. He also stated that they asked the Tenant if he was sure he wanted to rent the unit without seeing it and he confirmed he was.

Introduced in evidence was a text message from the Landlord to the Tenant on February 11, 2016 wherein they offer him an opportunity to view the condo that day. The Tenant responded that he would attend on “Monday early evening at 8 pm”; notably, the Monday to which he refers is February 15, 2016, the start of the tenancy.

O.W. stated that the Tenant’s claim that they denied him an opportunity to view the rental unit is simply false as the previous tenant was very reasonable and would have allowed the Landlord the opportunity to show the rental unit to the Tenant had he taken them up on their offer to view the unit prior to February 15, 2016.

O.W. also stated that when the Tenant came to the rental unit on February 15, 2016 he became very intense and aggressive and insisted the carpets be replaced. The Landlord stated that they decided that they were not comfortable renting to him. O.W. confirmed they did not give the Tenant keys as he refused to move in.

When I asked O.W. who broke the contract, O.W. stated that it was the Tenant. O.W. testified that the Tenant refused the keys, threatened to call the police and the city, and it was the Tenant who refused to rent the suite in the condition he felt was unacceptable.

Introduced in evidence was an email from the Tenant to the Landlords (which is noted as being in response to communication from the Landlords on February 16, 2016) wherein the Tenant writes as follows:

"am not threatening. It was not clean show me receipt that it is clean and I will take your word for it..."

You guys have no idea what kind of trouble you are in. Since you have terminated the contract I am entitled to full refund. I never terminated. You the owner, you the one who kicked me out and did not give me keys...

You guys are dumb! Because I will get my money back eventually they told me this happens all the time and you will be in big trouble! You are fully responsible and you have no idea what you guys are about to get yourselves into. Trust me in that. Good night and good luck to you. I'm gonna get all the money back for my hotel too like I told you earlier today. The costs are going up for you by the day. \$80 per night I am paying. I have another 12 days left that's another \$1200 your going to have to pay in addition to all the damage you have caused me. I feel terrible for you guys now all because your cheap, nasty disrespectful people who think they can get away with this. The tenancy act told me there is no way you will get away with this and I will get every penny back. I was promised and gusreneeed. You guys are screwed. After all the photos I showed them and videos they were so understanding and they said they can provoke from renting to anybody in the future. So wish You all the best of luck. I tried, I called a million times, I did everything I can to warn you and not threaten you at all. You guys are so dumb. Because now you guys are in trouble and it's almost too late. If you don't refund the money back after I gave you that letter it's on with full action and they will be coming after you guys. I can't wait! To show you! You guys cruel low class people."

[Reproduced as Written]

Also introduced in evidence were text messages from the Tenant to the Landlords where he threatens to report them to the municipality and sue them for \$30,000.00 (a rate of \$80.00 per day) while he lives in a hotel for a year.

Both parties provided photos of the rental unit. The photos submitted by the Landlord show the rental unit as being clean and presentable. The photos submitted by the Tenant are taken close up and show some dirt in the area where a door hinges to the frame, small amounts of dirt in the cracks of a tiled floor, a small amount of debris on the toilet seat (which the Tenant alleges were cigarette ashes), and small stains on the carpet (which the Tenant alleges was "cat minure").

O.W. confirmed that the Landlords took photos of the rental unit to confirm its condition as the Tenant refused to take occupancy, alleging it was unacceptable.

O.W. testified that the debris on the toilet, which the Tenant alleged was cigarette ashes, was in fact dust from the bathroom vent, which had fallen after the vent was cleaned. He further testified that the stain on the carpet was not urine as alleged by the Tenant.

Analysis

In a claim for damage or loss under section 67 of the *Residential Tenancy Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

Section 7(1) of the Act provides that if a Landlord or Tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Based on the testimony of the parties, the evidence before me and the submissions of the parties and on a balance of probabilities I find as follows.

I find the parties entered into a binding tenancy agreement on January 14, 2016. Pursuant to this agreement, the Tenant agreed to pay monthly rent in the amount of \$1,250.00 payable on the first of the month. The Tenant also paid the amount owing for half of February in the amount of \$625.00 as well as a security deposit of \$625.00 on January 14, 2016.

Section 16 of the *Residential Tenancy Act* provides that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

I find that the Tenant refused to move into the rental unit, thereby breaching the tenancy agreement.

Section 32 of the *Residential Tenancy Act* provides that a landlord must maintain a residential property in a state of decoration and repair that complies with the health,

safety and housing standards required by law, and having regard to the age, character and location of the rental unit, is suitable for occupation by a tenant.

Based on the photos submitted by the parties I find the Landlords provide the rental unit in a condition which satisfies section 32.

Where the evidence of the parties conflicts as to the ability of the Tenant to view the rental unit prior to the start of the tenancy, I prefer the evidence of the Landlords. I found the Landlords testimony to be consistent and forthright. Conversely, I found the Tenants answers to be vague and evasive. I also find the communications sent by the Tenant to the Landlords to indicate the Tenant was attempting to bully the Landlords into providing him monetary compensation.

I also find that the Tenant, in failing to view the rental unit prior to the start of the tenancy failed to exercise due diligence.

Had the Tenant believed the rental unit required repairs, or cleaning, his remedy would have been to make an application pursuant to sections 32 and 33 for Order that the Landlords make repairs or attend to cleaning. He may also have potentially requested monetary compensation pursuant to sections 65(1) and 67.

It appears the Tenant simply changed his mind about the rental unit when it was time for the tenancy to begin. It was his responsibility to end the tenancy in accordance with the *Act*, had he decided not to rent the rental unit. Pursuant to section 45(1) the effective date of the Tenant's notice, had it been properly provided would have been March 31, 2016.

The evidence shows that the Landlords made their best efforts to re-rent the rental unit as soon as possible and in doing so fulfilled their obligation to minimize their loss. As the Tenant entered into a year-long fixed term tenancy, he was potentially liable for rent for the entire term; fortunately for the Tenant the Landlord was able to re-rent the unit as of April 1, 2016. Accordingly, I grant the Landlord's request to retain the funds provided for half of February 2016 as the Tenant was obligated to pay that amount pursuant to the agreement. I also award the Landlords further compensation for loss of rent for the month of March 2016 for a total of **\$1,250.00**.

The Landlords, having been substantially successful, are also entitled to recover the filing fee in the amount of **\$100.00** such that their total compensation is **\$1,350.00**.

I authorize the Landlords to retain the \$625.00 security deposit towards the amount awarded and I grant the Landlords a Monetary Order in the amount of **\$725.00**. This Order must be served on the Tenant by the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

Based on the foregoing reasons, the Tenants application for monetary compensation is dismissed in its entirety.

Conclusion

The parties entered into a binding tenancy agreement as of January 14, 2016. While the Tenant failed to occupy the rental unit, he was obligated to pay rent as of February 15, 2016. The Landlord may retain the Tenant's security deposit of \$625.00, the \$625.00 paid for one half of February 2016 and are entitled to a Monetary Order in the amount of **\$725.00** representing the balance of the unpaid rent for March 2016 and the \$100.00 filing fee.

The Tenants application is dismissed.

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: September 20, 2016

Residential Tenancy Branch