



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord; his witness and the tenant.

During the hearing, the landlord indicated that he had incurred substantial costs in serving the tenant with his Application for Dispute Resolution and hearing documents. The landlord sought to amend his Application to include a claim of \$400.00 for this service.

Residential Tenancy Branch Rule of Procedure 4.1 states an applicant may amend a claim by:

- completing an Amendment to an Application for Dispute Resolution form; and
- filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch directly or through a Service BC office.

Rule 4.2 states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find that the cost of serving documents to the tenant is not one that could have been reasonably anticipated and as such I find it would be unfair to the tenant to allow the landlord to amend his claim at the hearing depriving the tenant of an opportunity to be prepared to respond to the claim.

As such, I decline to accept the landlord's oral request to amend his Application.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for interest on unpaid rent; for garbage removal; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on October 14, 2011 for a 2 year fixed term tenancy that began on November 1, 2011 and converted to a month to month tenancy on November 1, 2013 for a monthly rent of \$960.00 due on the 1st of each month with a security deposit of \$480.00 paid.

The landlord stated that by mutual agreement the rent was increased to \$985.00. The tenant stated that he did not agree to such an increase but rather the landlord just told him rent would be increased and he had to start paying it.

The tenancy agreement contains a handwritten clause that states: "All arrears hereunder bear interest at the rate of 2½ % per month (33% per year)" [reproduced as written]. This clause was initialled by both parties.

The landlord testified that on January 18, 2016 he received a text from stating that he was moving out of the rental unit. The landlord did not provide a copy of the text message. The landlord also stated he the tenant had not returned the keys to the unit. The landlord stated that the tenant has failed to pay rent for the months of November and December 2015 and January and February 2016. The landlord also seeks interest on the unpaid rent per the term in the tenancy agreement in the amount of \$252.50.

The tenant submitted that he moved out in October 2015 and he texted the landlord, sometime in November 2015 that he had done so. He stated that he also informed the landlord that he had left about \$4,000.00 worth of "stuff" that the landlord could have.

The landlord acknowledges that the tenant left items behind that he disposed of and seeks compensation for landfill fees only in the amount of \$127.00. The landlord stated he did not seek any compensation for labour to remove the items.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 43 of the *Act* stipulates that a landlord may impose a rent increase only up to the amount: calculated in accordance with the regulations; ordered by the director on an application for an additional rent increase; or agreed to by the tenant in writing.

In the case before me, the tenant disputes ever agreeing to a rent increase and the landlord has provided no evidence of anything in writing as is required under Section 43 that the tenant agreed to a rent increase. As a result, for the purposes of this decision, I find that the monthly rent amount is \$960.00.

Section 44(1) of the *Act* states a tenancy ends only if one or more of the following applies:

- a) The tenant or landlord gives a notice to end the tenancy in accordance with one of the following:
 - i. Section 45 (tenant's notice);
 - ii. Section 46 (landlord's notice: non-payment of rent);
 - iii. Section 47 (landlord's notice: cause);
 - iv. Section 48 (landlord's notice: end of employment);
 - v. Section 49 (landlord's notice: landlord's use of property);
 - vi. Section 49.1 (landlord's notice: tenant ceases to qualify);
 - vii. Section 50 (tenant may end tenancy early);
- b) The tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- c) The landlord and tenant agree in writing to end the tenancy;
- d) The tenant vacates or abandons the rental unit;
- e) The tenancy agreement is frustrated; or
- f) The director orders the tenancy is ended.

Section 45(1) stipulates that a tenant may end a month to month tenancy by giving the landlord notice to end the tenancy on a date is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

A material term of a tenancy agreement is a term that is agreed by both parties is so important that the most trivial breach of that term gives the other party the right to end the tenancy, such as the payment of rent.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord or tenant must be signed and dated by the landlord or tenant; give the address of the

rental unit; state the effective date of the notice, and if issued by the landlord state the grounds for ending the tenancy and be in the approved form.

As per the testimony of both parties I find the tenancy ended as a result of the tenant giving the landlord notice pursuant to Section 45(1). However, I find the tenant has failed to provide any evidence of the notice that he stated he provided to the landlord in November 2015.

In the absence of such evidence and on a balance of probabilities, I prefer the landlord's testimony that he received notice of the tenant's intention to end the tenancy on January 18, 2016. As a result, I find the earliest the tenancy could end, pursuant to Section 45(1), was February 29, 2016.

Based on the above, I find the landlord is entitled to the payment of rent for the months of November and December 2015 and the months of January and February 2016 in the amount of \$960.00 per month or total of \$3,840.00.

Section 1 of the *Act* defines "rent" as money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include a security deposit; a pet damage deposit; or a fee prescribed under Sections 6 or 7 of the Residential Tenancy Regulation.

Section 6(3) of the *Act* stipulates that a term in a tenancy agreement is not enforceable if the term is inconsistent with the *Act* or regulations; the term is unconscionable; or the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Despite the provision agreed to by both parties in the tenancy agreement I find that the clause requiring the tenant to pay interest on unpaid rent does not comply with either the definition of rent under Section 1 of the *Act* or an allowable fee under Section 6 or 7 of the Regulation.

As a result, I find, pursuant to Section 6(3) of the *Act*, the term for interest is inconsistent with the *Act* and regulations. As a result, I dismiss the portion of the landlord's claim for interest on unpaid rent.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Based on the testimony of both parties, I accept the tenant left some items behind in the unit and as a result the landlord had to dispose of them. I find the landlord has established that he incurred costs as a result for the landfill fees totalling \$127.00 by the provision of his receipts.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$4,067.00** comprised of \$3,840.00 rent owed; \$127.00 landfill fees and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$480.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$3,587.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 28, 2016

Residential Tenancy Branch