



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Landlord:	MND MNR MNSD MNDC FF
	Tenant:	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 Landlords’ Application was received at the Residential Tenancy Branch on June 14, 2016 (the “Landlord’s Application”). The Landlord applied for the following relief pursuant to the *Act*:

- a monetary order for damage to the rental unit, site or property;
- a monetary order for unpaid rent or utilities;
- an order that the Landlord be allowed to retain the security or pet damage deposits;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenant’s Application was received at the Residential Tenancy Branch on September 12, 2016 (the “Tenant’s Application”). The Tenant applied for the following relief pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord return the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Landlords were both in attendance, as was the Tenant. All parties provided affirmed testimony.

The Landlords confirmed their Application package was served on the Tenant by registered mail. Although unable to provide a specific date, the Tenant acknowledged receipt in mid-June 2016. The Tenant testified his Application package was served on the Landlords by registered mail on or about September 12, 2016. The Landlords acknowledged receipt. All parties were in attendance and were prepared to proceed. No further issues were raised with respect to service or receipt of evidence.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to 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

1. Is the Landlord entitled to monetary order for damage to the rental unit, site or property?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to an order that the Landlord be allowed to retain the security or pet damage deposits?
4. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
5. Is the Landlord entitled to an order granting recovery of the filing fee?
6. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
7. Is the Tenant entitled to an order that the Landlord return the security deposit or pet damage deposit?
8. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed they initially entered into a fixed-term tenancy agreement for a furnished rental unit from July 1, 2015 to September 30, 2015. The Tenant paid a security deposit of \$800.00. At the conclusion of the initial fixed-term tenancy, they agreed to a further fixed-term tenancy from October 1, 2015 to September 30, 2016. Rent in the amount of \$1,675.00 per month was due on the first day of each month.

On or about May 5, 2016, the Tenant notified the Landlords of his intention to end the fixed-term tenancy via email. At around the same time, the Landlord B.B. discovered the Tenant had been renting the unit on AirBnB. The Tenant acknowledged during the hearing that the rental unit was listed with a property management company for this purpose. According to the Tenant, a confrontation ensued on May 5, 2016. The Landlord B.B. was very upset. She demanded that the Tenant vacate the rental unit and return the access fobs, which he did. The Tenant's few personal belongings were removed by the Tenant and one access fob was returned to the Landlord at that time. The second access fob was returned to the concierge the following day. The Tenant has not returned.

The Landlord's Evidence

The Landlords claimed to be entitled to \$1,675.00 for rent for the month of June 2016, although she acknowledged she was able to re-rent the unit, effective June 1, 2016.

The Landlords also claimed \$920.00 for repairs to the rental unit. The Landlord D.N. provided oral testimony that he had to clean a sofa and a bed that were covered in animal hair, blood and urine; repair drywall; wash shears; clean and replace a seal on the refrigerator; and clean and replace a solenoid in the dryer.

In addition, the Landlords claimed \$429.00 to replace a sheet set and two large bath towels, change the locks on the rental unit, and replace the bike key.

Finally, the Landlords requested \$1,700.00 in compensation for wear and tear on the rental unit caused by the AirBnB rentals. The Landlord B.B. testified that she estimated the furniture and appliances, which were new when the Landlord's purchased the property in about seven years ago, had a further useful life of five years, but that this was reduced to six months because of the AirBnB rentals. The Landlord B.B. estimated the cost to replace the furniture and appliances would be \$3,400.00 but that half this amount would be appropriate.

The Landlord did not provide any photographic evidence of the damage or receipts for out-of-pocket expenses.

In reply, the Tenant referred to a letter from the property management company, dated July 4, 2016. The letter provided a summary of the condition of the rental unit. The property management company advised that the dryer had never worked properly throughout the tenancy; that the fridge was cleaned on May 1, 2016, and "was in perfect working order" as of that date; and that "all other furnishings had no major or minor

deficiencies through the management of this unit.” The Tenant also noted the absence of photographic or other documentary evidence in support of the damage or compensation claimed by the Landlords.

The Tenant’s Evidence

As noted above, the Tenant vacated the rental unit on or about May 5, 2016. He testified that he did so because he was intimidated by the Landlord B.B. – a woman in her 70s – who was very angry during the confrontation on May 5, 2016. The Tenant submitted he did not return to the rental unit after removing his few belongings and that he is entitled to receive the balance of rent for May 2016 on a pro-rated basis. He calculated this to be \$1,458.87.

In addition, the Tenant claimed to be entitled to double the amount of the security deposit, or \$1,600.00. He advised that his forwarding address was provided to the Landlords in writing by registered mail on June 2, 2016, but that the security deposit was not paid to him. A copy of the letter and the registered mail receipt were submitted with the Tenant’s documentary evidence.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the parties to prove the existence of the damage or loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the other party. Once that has been established, they must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the claiming party did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

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

The Landlord's Claims

Section 7 of the *Act* requires parties to mitigate their losses. In this case, the Landlord B.B. confirmed the Landlords were able to re-rent the unit, effective June 1, 2016. Accordingly, I find they have mitigated their losses caused by the loss of the tenancy and are not entitled to receive rent from the Tenant for the month of June 2016.

With respect to the Landlord's claims for cleaning, repairs, replacement of linens, and wear and tear, I find there is insufficient evidence before me to conclude the Landlords are entitled to the amounts claimed. Helpful evidence may have included receipts, photographs or estimates, which were not submitted. I also note the Tenant did provide documentary evidence from the property management company confirming the condition of the rental unit as of May 1, 2016.

In light of the findings above, I order that the Landlord's Application is dismissed.

The Tenant's Claims

The Tenant claimed he is entitled to recover 27 days of rent for the month of May 2016 on a pro-rated basis. He has calculated this to be \$1,458.87. Section 44 of the *Act* confirms that a tenant may not give notice to end a fixed-term tenancy earlier than the date specified in the tenancy agreement as the end of the tenancy. I find the email notice provided by the Tenant was ineffective to end the tenancy before the end of the fixed term. I also afford little weight to the suggestion that the Tenant was intimidated by the Landlord B.B. during the confrontation. Rather, I find that the Tenant voluntarily

removed his belongings from the rental unit at the request of the Landlord B.B., which more likely than not suited his stated desire to end the tenancy. Accordingly, I find the Tenant is not entitled to recover the balance of rent paid for the month of May 2016.

The Tenant also applied for the return of double the security deposit, pursuant to section 38 of the *Act*. This provision requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after the latter of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. Failing to do so entitles a tenant to the return of double the security deposit.

In this case, I find that the Tenant sent his forwarding address in writing to the Landlord by registered mail on June 2, 2016. Tracking information provided by the Tenant confirms, and I find, that the Tenant's forwarding address was received by the Landlords on June 7, 2016. However, the Landlords filed the Landlords' Application on July 14, 2016, within 15 days after they received the Tenant's forwarding address in writing. Accordingly, I find the Tenant is not entitled to recovery double the security deposit.

However, as noted above, I have found that the Landlords have not provided sufficient evidence for me to conclude they are entitled to retain the security deposit. Accordingly, the Landlords are ordered to return the \$800.00 security deposit to the Tenant on or before January 13, 2017. The Tenant is granted a monetary order in the amount of \$800.00, which will be of no force or effect if the security deposit is returned to the Tenant on or before that date.

As neither party has had substantial success, I decline to grant either party recovery of the filing fee.

The Landlords and the Tenant committed multiple breaches of the tenancy agreement and the *Act* during this tenancy. Before entering into further tenancy agreements, both parties are cautioned and encouraged to familiarize themselves with the rights and responsibilities of landlords and tenants under the *Act*, and to conduct themselves accordingly. If questions arise concerning the application of the *Act*, the parties are encouraged to visit the Residential Tenancy Branch website or contact an Information Officer, toll free: 1-800-665-8779 or via email: HSRTO@gov.bc.ca.

Conclusion

The Landlords' Application is dismissed.

The Tenant is granted a monetary order in the amount of \$800.00, which will be of no force or effect if the Landlord pays \$800.00 to the Tenant on or before January 13, 2017. If necessary, this order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: December 09, 2016

Residential Tenancy Branch