



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND MNSD FF O
Tenant: MNDC

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application is dated August 7, 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;
- an order that the Landlord be allowed to keep the security or pet damage deposits;
- an order granting recovery of the filing fee; and
- other unspecified relief.

The Tenant’s Application is dated August 24, 2016 (the “Tenant’s Application”). The Tenant applied for a monetary order for money owed or compensation for damage or loss, pursuant to the *Act*.

The Landlord was represented at the hearing by her mother, who is also the owner of the rental unit. The Tenant attended the hearing on his own behalf. Both parties provided a solemn affirmation.

On behalf of the Landlord, C.L. confirmed the Landlord’s Application package was served on the Tenant by courier. Although unable to provide a specific date, the Tenant acknowledged receipt in or about August 2016. The Landlord submitted a subsequent documentary package, which was received at the Residential Tenancy Branch on January 4, 2017. This package consisted largely of documents already submitted with the Landlord’s Application package, plus a note submitting the Tenant did not confirm that his digital evidence could be viewed by the Landlord.

The Tenant testified his Application package, which included digital evidence on a CD, was served on the Landlord by Canada Post on or about August 26, 2016. C.L. acknowledged receipt on behalf of the Landlord. However, she indicated that the evidence contained on the CD could not be viewed by the Landlord, and that the Tenant did not take steps to determine this pursuant to the Rule of Procedure.

Rule of Procedure 3.10 states:

The format of digital evidence must be accessible to all parties. Before the hearing, the party submitting the digital evidence must determine that the other party and the Residential Tenancy Branch have playback equipment or are otherwise able to gain access to the evidence.

If a party is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

[Reproduced as written.]

I find the Tenant did not take steps to determine that his digital evidence was accessible by the Landlord, and C.L. testified it could not be accessed, the digital evidence submitted by the Tenant has not been considered in this Decision.

The parties were represented at the hearing 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 an order that she be allowed to retain the security or pet damage deposits?
3. Is the Landlord entitled to an order granting recovery of the filing fee?
4. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

The Landlord submitted a copy of the tenancy agreement between the parties into evidence. It confirms the parties entered into a fixed-term agreement for the period from May 3, 2016 to August 31, 2016. Rent in the amount of \$750.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$375.00, which the Landlord holds. The Tenant moved out on or about July 31, 2016. The parties agreed the rental unit is a 2-bedroom condominium that has been modified to create three sleeping areas.

The Landlord's Evidence

The Landlord claimed \$1,800.00 for cleaning and repairs to the rental unit and for lost rent in July and August 2016.

First, the Landlord seeks to recover cleaning costs of "approximately \$100.00" to clean a soiled carpet. On behalf of the Landlord, C.L. testified that the Landlord was advised by a contractor that cleaning the carpet would cost this amount. According to C.L., the carpets have not yet been cleaned.

In reply, the Tenant acknowledged the carpets were soiled but maintained the carpets were soiled when he moved in, which was repeated on the condition inspection report submitted into evidence by the Landlord.

Second, the Landlord sought to recover "approximately \$150.00" to repair damage to the walls of the rental unit. Again, C.L. testified that this amount was based on advice from a contractor and that the walls have not yet been repaired.

In reply, the Tenant acknowledged the holes in the walls but denies responsibility, alleging the holes were there when he moved in to the rental unit.

Third, the Landlord sought to recover \$750.00 for July 2016 rent because the Tenant's wife stayed with him during that time. On behalf of the Landlord, C.L. testified the strata bylaws limit the number of occupants in the rental unit. The Landlord submitted a copy of the applicable bylaw, which states:

The strata lot shall be occupied by not more than three (3) persons, without the written permission of the strata council.

[Reproduced as written.]

Since the Tenant's wife stayed with him in July 2016, C.L. alleged the Landlord was unable to rent another room. The Landlord has claimed \$750.00 because this is what the Tenant paid per month.

Fourth, the Landlord claims to be entitled to recover \$800.00 for lost rent for the month of August 2016. Again, C.L. testified that another room could not be rented at market rent because of the presence of the Tenant's wife in July 2016.

In reply to the Landlord's claims for rent, the Tenant acknowledged that his wife stayed with him during the last three weeks of July 2016. However, he denies any obligation to pay double rent for that month. His wife was a guest who divided her time between the Tenant's room and friends. The Tenant acknowledged he moved out of the room on or about July 31, 2016, before the end of the fixed term. However, the Tenant testified he found a student to occupy the rental unit, effective August 1, 2016, but that the Landlord refused to allow him to stay there.

Finally, the Landlord applied to recover the \$100.00 filing fee paid to make the Landlord's Application.

The Tenant's Evidence

The Tenant claimed \$750.00 for what he suggested was an overpayment of rent for the month of August 2016. He acknowledged he moved out of the rental unit on or about July 31, 2016. However, he claimed he should not have to pay rent for August 2016 – in accordance with the fixed-term tenancy agreement – because the Landlord agreed he could sublet his room commencing August 1, 2016.

In reply, and on behalf of the Landlord, C.L. testified the Landlord had no knowledge of the Tenant's intention to sub-let the rental unit. C.L. did not dispute the Tenant's evidence that rent was paid by the Tenant for July and August 2016.

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 each party 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 as follows:

The Landlord's Claims

The Landlord claimed \$250.00 to clean soiled carpets and to repair damaged walls in the rental unit. Although the Landlord submitted a condition inspection report with her documentary evidence, C.L. testified that the work has yet to be completed. Further, the Tenant alleged the carpets were soiled and the walls were damaged when the

tenancy began. The Tenant's disagreement was previously noted on the condition inspection report. I find there is insufficient evidence before me to conclude the Landlord is entitled to the relief sought. The oral testimony provided by C.L. confirms the work has not been completed more than five months after the tenancy ended. Further, the claim is not supported by sufficient documentary evidence to confirm the damage was caused by the Tenant, or that it resulted in any loss to the Landlord. These elements of the Landlord's claim are dismissed.

The Landlord also claimed \$1,550.00 in lost rent for the months of July and August 2016. On behalf of the Landlord, C.L. testified that the Tenant's wife stayed in the rental, resulting in a loss of rent for that month. The Tenant acknowledged his wife stayed with him for three weeks but denies he is obligated to pay double rent. The Landlord also claimed lost rent for the month of August 2016 because she was unable to rent another room in the property. The Tenant testified he found an individual to rent space in August 2016, but that the Landlord would not permit entry. The Landlord denied any knowledge of the Tenant's plans. I find there is insufficient evidence before me to conclude the Landlord is entitled to recover lost rent. Indeed, I find that the Tenant paid rent for the months of July and August 2016 – to the end of the fixed term – which was not disputed by the Landlord. This aspect of the Landlord's claim is dismissed.

The Landlord's Application is dismissed. As the Landlord has not been successful, I decline to grant recovery of the filing fee. Further, as the Landlord's Application has been dismissed, the Landlord has no authority to keep the security deposit. I order the Landlord to repay the security deposit to the Tenant immediately. In the event the Landlord does not comply with this order, I grant the Tenant a monetary order in the amount of \$375.00.

The Tenant's Claims

The Tenant sought return of rent for the month of August 2016. He testified he found an individual to rent the room starting on August 1, 2016, but that the Landlord would not permit that individual to the rental unit.

Section 34 of the *Act* stipulates that a tenant must not assign a tenancy agreement or sublet a rental unit unless the landlord consents in writing. I find there is insufficient evidence before me to conclude the Tenant had the Landlord's consent to sublet the room in the rental unit in writing. Rather, I find the Tenant has simply paid the rent he owed under the fixed-term tenancy agreement between the parties. As a result, the

Tenant's Application to recover his rent payment for the month of August 2016 is dismissed.

Conclusion

The Landlord's Application is dismissed.

The Tenant's Application is dismissed. However, the Tenant is granted a monetary order in the amount of \$375.00 for the repayment of the security deposit held by the Landlord pending the outcome of this hearing. This order may be filed and enforced in 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: February 20, 2017

Residential Tenancy Branch