



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding QUALICUM BAY SENIOR HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, PSF, MND, FF

Introduction

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

The Landlord filed an Application requesting a monetary order for damage to the rental unit, and to recover the cost of the filing fee.

The Tenant filed for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement, and for the Landlord to comply with the *Act*, and to recover the cost of the filing fee.

The Landlord and Tenant both appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and 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.

Preliminary and Procedural Matters

On November 22, 2016, the Tenant applied for dispute resolution seeking compensation in the amount of \$25,000.00. The Tenant did not provide a monetary order worksheet providing details on what was being claimed and the specific amount of compensation that the Tenant is seeking.

Section 59 of the *Act* states that an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings.

Section 59 of the Act permits the director to refuse to accept an application for dispute resolution if the application does not comply with the requirement to provide full particulars of the dispute.

Section 9 of the Act gives the director authority to establish and publish rules of procedure for the conduct of proceedings under part 5 of the Act. The Residential Tenancy Branch Rules of Procedure 2.5 states that an applicant must submit a detailed calculation of any monetary claim being made.

I find that the Tenant failed to provide the full particulars of her claim. The Landlord did not have an opportunity to know the case against him and prepare in advance of the hearing. Consequently, I refuse to accept the Tenant's application for dispute resolution. I grant the Tenant leave to reapply for her claims.

The hearing proceeded on the Landlord's application for a monetary order for damage to the rental unit.

Issues to be Decided

- Is the Landlord entitled to monetary relief for damage to the unit?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Parties testified that the tenancy began in November 2015, as a month to month tenancy. Rent in the amount of \$500.00 was due on the first day of the month. The Tenant moved out of the rental unit on February 29, 2016.

March 2016, Rent

The Landlord testified that the Tenant moved out of the rental unit on February 29, 2017, but the Tenant did not give the Landlord proper notice to end the tenancy. The Landlord testified that he was unable to rent the unit out for the month of March 2016, and has suffered a loss of \$500.00 in rent.

In response, the Tenant testified that she was under no obligation to stay in the rental unit and pay rent because of a mold and mildew problem on the windows. The Tenant submitted that she was told by a professional to not touch the mold.

The Tenant testified that she did not provide the Landlord with a written letter stating that the presence of the mold was a breach of their tenancy and that if the Landlord did not deal with the problem the Tenant would move out.

Destroyed Carpet

The Landlord testified that a 12 x 12 carpet was left on the property by a previous occupant. The Landlord testified that the Tenant wanted the carpet and was given the carpet. The Landlord testified that he received a complaint that the Tenant left the carpet outside in the rain. The Landlord testified that the carpet was ruined. The Landlord seeks compensation of \$480.00 for the cost of replacing the carpet. The Landlord testified that he has not purchased a new replacement carpet.

In response, the Tenant testified that the previous occupant asked her if she wanted to buy the carpet for \$50.00 and she replied no. She testified that the carpet was dirty and damaged. She testified that she tried to clean it but it was too old and dirty. She testified that she eventually cut it up and disposed of most of it.

Cleaning Costs

The Landlord testified that the rental unit was left dirty and that he hired someone to clean the rental unit. He testified that the cleaner had to wash the walls, stove, fridge, floors and clean mold from the windows. The Landlord testified that the cleaning took 8 hours @ \$20.00 per hour. The Landlord provided a receipt.

In response, the Tenant testified that she did some cleaning of the rental unit prior to moving out. She testified that she did not clean any of the mold and mildew off the windows.

The Tenant testified that there was no move in inspection or move out inspection done with the Landlord. She testified that she did not notice any mold or mildew on the windows when she moved into the unit. She testified that the windows were foggy and misty a few weeks after she moved in.

The Tenant had a witness provide testimony. The witness Ms. M.M. testified that he helped the Tenant clean the rental unit. She testified that the kitchen, bathroom, floors and walls were cleaned. The Tenant testified that she took photographs of the rental unit on February 29, 2017. The Tenant provided copies of the photographs.

The Landlord testified that there was no move in inspection done with the Tenant.

Dump Fee

The Landlord testified that the Tenant left bags of garbage behind when she moved out and the garbage needed to be taken to the dump. The Landlord is seeking \$114.00 and has provided a receipt.

In response, the Tenant testified that she left some garbage bags behind. She testified that she left 2 large bags and 2 recycle bags in the designated garbage area.

The Tenants witness testified that the garbage was left in the designated spot, neatly arranged.

Analysis

Section 45 of the *Act* states that a Tenant may end a periodic tenancy by giving the Landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the Landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 45 (3) of the *Act* states that if a 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.

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

March 2016, Rent

Section 26 of the *Act* states that a Tenant must pay rent when it is due under the tenancy agreement, whether or not the Landlord complies with the *Act*, the regulations or the tenancy agreement, unless the Tenant has a right under this *Act* to deduct all or a portion of the rent.

The Tenancy ended on February 29, 2017, when the Tenant moved out; however, I find that the Tenant did not give the Landlord proper notice to end the tenancy, and is therefore responsible to pay the rent for March 2016. The presence of mold in the rental unit does not give the Tenant authority to end the tenancy without giving proper written notice. If the Tenant believed that it was the Landlords responsibility to deal with the condensation and mold growth on the windows, the proper step would have been to apply for dispute resolution, rather than move out without giving proper notice.

I order the Tenant to pay the Landlord \$500.00 for March 2016, rent.

Destroyed Carpet

The Landlord's claim for \$480.00 for the replacement cost of a used carpet is dismissed. I find that the carpet was left by a previous Tenant, and the Landlord has not replaced the carpet. The age, condition, and value of the carpet is disputed by the Tenant. The Landlord provided insufficient evidence to prove he suffered a loss and to prove the value of the loss.

Cleaning Costs

The parties provided conflicting testimony on the condition of the rental unit at the end of the tenancy. I find that there was no move in inspection or move out inspection to show the condition of the unit at the start and end of the tenancy.

I find that both parties provided equally believable testimony regarding the cleanliness of the rental unit. When two parties provide equally believable testimony, the burden of proof rests with the applicant. I find that other than the condition of the windows and window tracks, the Landlord has provided insufficient evidence to support his claim that the rental unit required cleaning.

The Tenant testified that there was no mold or mildew on the windows when she moved in, and the photographic evidence shows that there was mold or mildew on the windows at the end of the tenancy. There is insufficient evidence from the Tenant to support her claim that the mold was toxic. I find that the Tenant was responsible to clean the windows and window tracks before moving out.

I award the Landlord a portion of his claim for cleaning in the amount of \$40.00.

Dump Fee

The Tenant testified that she left 4 bags of garbage in the designated area on the rental property when she left. The tenancy agreement contains a term regarding refuse and recycle. The term indicates that a resident shall not place any refuse, boxes or papers in parking areas or other common areas of the residence. The tenancy agreement also states that the resident's possessions, furniture and all refuse shall be moved in or out of the premises in a competent manner.

I find that the tenancy agreement does not provide a specific limit on the amount of garbage a Tenant can dispose of; rather it specifies where garbage cannot be placed.

I prefer the Tenants evidence regarding the amount of garbage that she disposed of. The Tenant's evidence was corroborated by her witness.

The Landlords claim to recover the dump fee is dismissed.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was partially successful in his application, I order the Tenant to pay the Landlord for the cost of the filing fee.

I find that the Landlord has established a claim of \$640.00 comprised of \$500.00 for rent; \$40.00 for cleaning; and \$100.00 for the filing fee.

I grant the Landlord a monetary order in the amount of \$640.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant owes the Landlord \$500.00 for rent; \$40.00 for cleaning; and \$100.00 for the filing fee.

The Landlord is granted a monetary order in the amount of \$640.00.

The Tenant has leave to reapply for her 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: June 16, 2017

Residential Tenancy Branch