



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 was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution. It is readily apparent from the information provided with the Application for Dispute Resolution that the Landlord is also seeking compensation for damage to the rental unit, and I will also consider that matter at these proceedings.

In the documents submitted on August 11, 2017 the Landlord declared that she returned the Tenant's security deposit plus interest on August 10, 2017. Although I did not notice this written submission at the time of rendering my decision and it was not raised during the hearing, I find that this written submission is sufficient notice that the Landlord withdrew her application to keep all or part of the security deposit.

The Landlord stated that on August 16, 2017 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents.

On August 16, 2017 the Landlord submitted 15 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant with the Application for Dispute Resolution. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On January 12, 2018 the ~~Landlord~~ Tenant submitted 74 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, on January 12, 2018. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the evidence submitted by the parties has been reviewed, but is only referenced in this written decision if it is relevant to my decision.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and to compensation for unpaid rent, ~~and to keep all or part of the security deposit?~~

Preliminary Matter #1

With the consent of both parties the Application for Dispute Resolution was amended to reflect the spelling of the Tenant's name, as it was provided at the hearing.

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on September 01, 2013;
- the tenancy ended on July 30, 2017;
- the Tenant agreed to pay monthly rent of \$500.00 by the first day of each month; and
- the Tenant paid a security deposit of \$250.00 on September 01, 2013.

The Landlord is seeking compensation for unpaid rent.

The Landlord initially stated that the Tenant still owes \$500.00 in rent for August of 2015.

Several rent receipts were submitted in evidence. The receipt dated July 16, 2015 indicates that the Tenant paid \$750.00 for the period between July 01, 2015 and

August 15, 2015. Upon viewing this receipt the Landlord stated that she made an error and that the Tenant only owes \$250.00 in rent for August of 2015.

The Tenant stated that she paid \$250.00 in rent for August on August 01, 2015. Much later in the hearing the Tenant stated that she also paid \$250.00 in rent for August on August 13, 2015, although she did not receive a receipt for that payment.

The Tenant stated that she did not pay full rent for August, September, and October of 2015 because the Landlord had agreed that she could withhold \$800.00 to compensate her for rent she had paid to move to another suite. She stated that after paying this rent the parties agreed that this tenancy should continue. She stated that the rent reduction was a verbal agreement and that she has no evidence to corroborate her submission.

The Landlord stated that she never agreed to reduce the rent to compensate the Tenant for money she had paid to move to another suite.

The Landlord stated that she did not file an Application for Dispute Resolution to recover the rent prior to filing this Application as she was trying to avoid conflict with the Tenant. She stated that she filed this Application for Dispute Resolution at the recommendation of the Agent for the Landlord, who is her accountant.

The Tenant submitted a letter from the Landlord, dated August 03, 2016, in which the Landlord declares the Tenant has not paid \$500.00 rent for August of 2015, \$500.00 rent for September of 2015, and \$250.00 rent for October of 2015. In this letter the Landlord declares that she will "consider" dismissing the rental arrears if she receives proof that the Tenant incurred moving costs of \$1,250.00.

The Tenant submitted an "annual rent receipt", dated December 03, 2016, which indicates the rent of \$1,250.00 is still outstanding.

The Landlord is seeking compensation of \$175.00 for replacing curtains in the rental unit. The Landlord stated that at the end of the tenancy one set of curtains were missing from the bedroom; ½ of the curtain set was missing from the kitchen; and ½ of the curtain set was missing from the patio door. The Tenant stated that all of the curtains were in place at the end of the tenancy.

The Landlord stated that she submitted no evidence to corroborate her submission that curtains were missing at the end of the tenancy.

The Landlord is seeking compensation of \$100.00 for cleaning the carpets. The Landlord and the Tenant agree that the carpets were not cleaned at the end of the tenancy and that there is a term in their tenancy agreement that stipulates the Landlord will arrange for professional carpet cleaning at the end of the tenancy, at the expense of the Tenant.

Analysis

On the basis of the undisputed evidence I find that the Tenant was obligated to pay rent of \$500.00 by the first day of each month.

On the basis of the undisputed evidence I find that the Tenant did not pay any rent for September of 2015 and that she only paid \$250.00 in rent for October of 2015.

I find that the Landlord's testimony regarding rent that was paid for August of 2015 is not particularly reliable, as she initially stated that no rent was paid for August of 2015 and amended that testimony after viewing a receipt that indicates \$250.00 was paid for August of 2015. I find that her amended testimony that \$250.00 was due is inconsistent with the letter she sent to the Tenant, dated August 03, 2016, in which the Landlord declares the Tenant has not paid \$500.00 rent for August of 2015, \$500.00 rent for September of 2015, and \$250.00 rent for October.

I find the Tenant's testimony regarding rent that was paid for August of 2015 is also not particularly reliable, as she initially stated that on August 01, 2015 rent of \$250.00 was paid for August of 2015. This is inconsistent with the receipt she submitted in evidence, which indicates that this rent was paid on July 16, 2015.

In determining that the Tenant's testimony regarding rent for August was not particularly reliable I was also influenced by the fact that the Tenant did not testify that she had also paid \$250.00 in rent on August 13, 2015 until much later in the hearing, long after she had been given the opportunity to state how much rent had been paid for August of 2015.

In light of the unreliable testimony regarding rent paid for August of 2015 I find that the most reliable evidence is the rent receipt that was submitted in evidence, which was

issued on July 16, 2015, at the time of payment. I therefore find that the Tenant paid \$250.00 in rent for August of 2015.

In adjudicating this matter I considered the Tenant's submission that she was not provided with a rent receipt for the payment she made on August 13, 2015. Given that she had been provided with a rent receipt for the payment made on July 16, 2016 I find, on the balance of probabilities, that a rent receipt would have been issued if a payment was made on August 13, 2015.

Section 26(1) of the *Residential Tenancy Act (Act)* stipulates that a tenant must pay rent when it is due. As the Tenant is required to pay rent when it is due, pursuant to section 26(1) of the *Act*, the Tenant bears the burden of proving that there was an agreement that she did not have to pay rent for the period between August 15, 2015 and October 15, 2015.

I find that the Tenant has submitted insufficient evidence to establish that there was an agreement that she did not have to pay rent for the period between August 15, 2015 and October 15, 2015. In reaching this conclusion I was heavily influenced by the Landlord's testimony that she did not agree that rent for this period was not required and by the fact there is nothing in writing from the Landlord that indicates such an agreement was reached.

In adjudicating this matter I was influenced, to some degree, by the letter dated August 03, 2016, in which the Landlord declares the Tenant has not paid \$500.00 rent for August of 2015, \$500.00 rent for September of 2015, and \$250.00 rent for October of 2015. In this letter the Landlord declares that she will "consider" dismissing the rental arrears if she receives proof that the Tenant incurred moving costs of \$1,250.00. On the basis of this letter I find that by August 03, 2016 the Landlord had clearly not agreed to reduce the rent in 2015.

In adjudicating this matter I was further influenced by the "annual rent receipt", dated December 03, 2016, which indicates the rent of \$1,250.00 is still outstanding. On the basis of this receipt I find that by December 03, 2016 the Landlord had still not agreed to reduce the rent in 2015.

As the Tenant has submitted insufficient evidence to establish that there was an agreement she did not have to pay rent for the period between August 15, 2015 and October 15, 2015, I find that she still owes \$1,000.00 in rent for this period.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Landlord has submitted insufficient evidence that curtains were missing at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs or a condition inspection report, that corroborates the Landlord's submission that curtains were missing or that refutes the Tenant's submission that all the curtains were in place.

On the basis of the term in the tenancy agreement that requires the Tenant to pay to have the carpet professionally cleaned at the end of the tenancy, I find that the Tenant is obligated to do so.

In addition to establishing that the Tenant was responsible for cleaning the carpet, I find that the Landlord must also accurately establish the cost of cleaning the carpet. I find that the Landlord failed to establish the true cost of cleaning the carpet. In reaching this conclusion I was strongly influenced by the absence of any documentary evidence that corroborates the Landlord's submission that it cost \$100.00 to clean the carpet. When receipts are available, or should be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to present the receipts. On this basis, I hereby dismiss the Landlord's claim for cleaning the carpet.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution. I am unable to award compensation for fees paid to file a different Application for Dispute Resolution and I therefore dismiss the Landlord's application for any other fees.

Conclusion

The Landlord has established a monetary claim, in the amount of \$1,100.00, which includes \$1,000.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$250.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for ~~the balance~~
~~\$850.00~~ \$1,100.00. In the event the Tenant does not voluntarily comply with this Order,
it may be served on the Tenant, filed with the Province of British Columbia Small Claims
Court and 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 *Act*.

Dated: February 15, 2018

Corrected: March 28, 2018

Residential Tenancy Branch