



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution, filed on January 17, 2018, the Tenant sought return of double the security deposit paid and recovery of the filing fee. In the Landlords' Application for Dispute Resolution, filed on January 31, 2018, the Landlords sought monetary compensation for loss of rent, damage to the rental unit and recovery of the filing fee.

The hearing was scheduled for 1:30 p.m. on August 21, 2018. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit paid?
2. Are the Landlords entitled to monetary compensation from the Tenant for loss of rent and damage to the rental unit?
3. Should either party recover the filing fee?

Background and Evidence

The Tenant testified as follows. She stated that the tenancy began March 18, 2017; Monthly rent was payable in the amount of \$1,100.00 and she paid a security deposit in the amount of \$550.00.

The parties discussed an agreement whereby the Tenant agreed to move from the rental unit on December 15, 2017 following which the Tenant would receive \$550.00 representing half a month's rent. The Landlords drafted a written agreement on these terms, which was provided in evidence although it was not signed by the Tenant.

The Tenant stated that she moved out of the rental unit on December 13, 2017, which she claimed was agreed to by the Landlords.

The Tenant sent a text message to the Landlords on December 13, 2017 asking that they perform a move out condition inspection as she was moving out of the city and wished to begin her drive.

The Tenant stated that the move out condition inspection was conducted at 9:00 p.m. on December 13, 2017. The Tenant stated that both Landlords came down to review the rental unit but failed to bring the condition inspection report with them. The Tenant also stated that both Landlords attended with their baby even though she asked that one of them attend and perform the inspection and the other deal with the baby.

The Tenant stated that the Landlords then sent her a copy of the move out condition inspection report on December 28, 2017 by email. In that email the Landlords also provided a copy of a letter dated December 27, 2017 wherein they confirm they provided her with her deposit. They also respond to the Tenants' suggestion that she was entitled to the sum of \$550.00 as per the unsigned agreement.

The Tenant stated that on December 19, 2017 she provided the Landlords with her forwarding address in writing. In the December 27, 2017 letter from the Landlords they confirm receipt of this letter on December 21, 2017.

In response to the Tenant's submissions the Landlord, C.S., testified as follows.

C.S. stated that they gave the Tenant \$550.00 on the date that she moved out, which they believed was the security deposit. She confirmed that although they offered to pay the Tenant \$550.00, representing return of one half months' rent, the Tenant did not sign the written agreement, nor did she agree to the terms.

The Landlord confirmed that although they gave her one month's notice to end the tenancy (which they concede was not on the proper form) the Tenant moved out on December 13, 2017, rather than waiting until January 10, 2018, which would have been her 30 days.

The Landlord stated that they had the move out condition inspection form with them on the 13th. She confirmed that she was surprised the Tenant moved out on the 13th as she initially stated she would move out on December 15th.

In the within action, the Landlords claimed the sum of \$1,750.00 for loss of rent, and damage to the rental unit. She confirmed they seek compensation for \$1,100.00 for loss of one month's rent and \$550.00 for "the security deposit", which the Landlords claim is well less than the amount of time they say it took them to clean, fix and paint the rental unit.

At the time of filing the Landlords claimed \$283.50-567.00 for cleaning, which they claimed was provided to them as an estimate from a professional cleaning company as well as \$450.00 which was also an estimate they received for repairing the drywall and repainting. The testimony of the Landlords was that they ended up doing all the cleaning and repairs on their own. They obtained quotes from others to support the amounts they would be paid had they outsourced it.

The Landlords confirmed that they rented the rental unit as of January 15, 2018. She stated that she was not able to rent it out earlier as the rental unit required extensive cleaning and repairs. She confirmed that in their advertising, they used the photos that they took in March of 2017 when they first finished the renovations and when they first advertised to this Tenant. The Landlord stated that they had just finished renovating the suite when the subject tenancy began.

The Landlord further stated that if the Tenant had signed the agreement and cleaned the rental unit as required they would have been happy to return half a month's rent as well.

In reply the Tenant testified that she didn't sign the written agreement regarding the \$550.00 because she did not think for a moment they would agree to the condition of the rental and the rest of the document provided that she was to pay \$50.00 a day, etc.

The Tenant also stated that she did not receive a proper 1 month notice but moved out because the Landlords asked her to move out "ASAP".

The Tenant stated that she wanted to come back to finish the cleaning but the Landlords changed the locks.

When I put it to the Tenant that the Landlord returned the sum of \$550.00 representing the security deposit the Tenant stated that it was the half month's rent because she agreed to move out as soon as possible and to do the Landlords a favour.

The Tenant also stated that the estimates were dated February 2018, yet she moved out in December of 2017.

Analysis

After consideration of the testimony and evidence and on a balance of probabilities I find as follows.

A tenancy can only be ended in accordance with the *Residential Tenancy Act*. Section 44 provides as follows:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [*tenant's notice*];

(i.1) section 45.1 [*tenant's notice: family violence or long-term care*];

(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, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

- (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;
- (f) the director orders that the tenancy is ended;
- (g) the tenancy agreement is a sublease agreement.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Neither party provided proper written notice as required by the *Residential Tenancy Act*. Similarly, although the parties discussed a mutual agreement to end the tenancy, the parties did not reach a binding agreement. As such, I find, pursuant to section 44(1)(d) that the tenancy ended when the Tenant vacated the rental unit on December 13, 2017.

Although the parties discussed an agreement whereby the Tenant would receive half a month's rent for vacating early, the Tenant failed to sign that document; further she testified that she did not sign the agreement as she did not believe the Landlords would find her cleaning satisfactory. For an agreement to be binding there must be a meeting of the minds; in this case I am unable to find they had any such agreement.

The evidence confirms that on the date the tenancy ended the Landlords provided the Tenant with the sum of \$550.00 representing return of her security deposit. While the Tenant may have hoped the Landlords would also pay her \$550.00 pursuant to the unsigned agreement, there was nothing compelling the Landlords to make such a payment. I therefore find the Tenant has received her security deposit such that her application for its return is dismissed.

Section 45 allows a tenant to end a tenancy and reads as follows:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) 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.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

(3) 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.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

As the Tenant vacated the rental unit without giving proper notice, I find the Landlords suffered a rental loss. I accept the Landlords' evidence that the rental unit was re-rented as of January 15, 2018. I therefore award the Landlords the sum of **\$1,100.00** representing compensation for loss of one months' rent.

Evidence submitted by the Landlords indicates they cleaned, repaired and painted the rental unit at the end of the tenancy.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;

- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) 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.

I find that the Landlords have failed to meet the burden of proving their claim for compensation for cleaning and repairs to the rental unit. The condition of the rental unit is not to be measured by the Landlords' standards or the Tenant's but a *reasonable* standard. The photos submitted by the Landlords show reasonable wear and tear. Similarly I find the rental unit was left reasonably clean. As such I find the Landlords have failed to prove the Tenant left the rental unit in a condition which violated the requirements of section 37.

As the parties have enjoyed divided success I find they should each bear their own filing fee.

Conclusion

The Tenant's claim for return of double the security deposit is dismissed.

The Landlords' claim for compensation for one month's rent is granted. The Landlords are granted a Monetary Order in the amount of **\$1,100.00**. This Order must be served on the Tenant and may be filed and enforce in the B.C. Provincial Court (Small Claims Division).

The Landlords' claim for compensation for the cost to clean, repair drywall and repaint the rental unit is dismissed.

Neither party shall recover the filing fee.

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 12, 2018

Residential Tenancy Branch