



Dispute Resolution Services

Page: 1

Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding 0899630 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FFL

Introduction

On March 15, 2018, the Landlord submitted an Application for Dispute Resolution for a monetary order for unpaid rent or utilities; to keep the security deposit; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The matter was scheduled as a teleconference hearing. The Tenant and the Landlord's agent ("the Landlord") attended the teleconference hearing.

At the start of the hearing I introduced myself and the participants. The Landlord and Tenant provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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

- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to compensation for damage to the unit?
- Is the Landlord entitled to keep the security deposit towards unpaid rent or damage?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began on December 1, 2015, as a one year fixed term tenancy. A new fixed term tenancy agreement was agreed upon from December 1, 2016, to November 30, 2017. Rent in the amount of \$1,800.00 was to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$900.00. The Tenant moved out of the rental unit on February 27, 2018.

The Landlord is seeking compensation for the following items and is looking to keep the security deposit of \$900.00 in partial satisfaction of the claims.

Unpaid Rent	\$467.40
Damage to walls	\$500.00
Closet Door damage	\$75.00
Light Bulb	\$30.00
Microwave	\$30.00
Cleaning of shower	\$150.00
Carpet Cleaning	\$150.00

Unpaid Rent

The Landlord is seeking the amount of \$467.40 in unpaid rent. The Landlord testified that the Tenant paid rent of \$1,761.05 each month instead of the \$1,800.00 as required by the most current tenancy agreement. The Landlord testified that the rent was short \$38.95 each month and that amount over a period of 12 months amounts to \$467.40.

The Landlord testified that he entered into another tenancy agreement with the Tenant at the end of the initial one year fixed term tenancy. The Landlord testified that at the time of the new agreement, the Tenant raised the issue of the rent increase being more than the amount permitted under the Act. The Landlord testified that he did not deal with this dispute at the time or during the tenancy and did not notify the Tenant that the Landlord believed the Tenant was not paying the full amount. The Landlord testified that he planned to deal with it at the end of the tenancy.

In reply, the Tenant submitted that he believes that his tenancy agreement did not require him to move out of the unit at the end of the fixed term. The Tenant testified that he did his research and he knows the rules regarding allowable rent increases. He testified that the Landlord did not issue a Notice of Rent Increase. The Tenant testified that he told the Landlord he was writing a cheque for \$1,761.05 and told the Landlord to let him know if that is a problem. The Tenant testified that the amount of rent was not listed on the tenancy agreement when he signed it.

The Landlord was permitted to provide a copy of the tenancy agreements after the hearing concluded. The Landlord provided a copy of the fixed term tenancy agreement from December 2015, and a copy of the fixed term tenancy agreement from December 2016. Both agreements contain a term initialled by the Landlord and Tenant that requires the Tenant to move out of the rental unit at the end of the fixed term tenancy.

Damage to Walls

The Landlord testified that the Tenant left the walls of the rental unit damaged at the end of the tenancy. He testified that the walls were scuffed and needed patching and painting. The Landlord provided an invoice for the cost of repairing the walls and provided photographs of the rental unit.

In reply, the Tenant testified that the rental unit had nicks and scratches at the start of the tenancy. The Tenant referred to a condition inspection report dated in December 2015. The Tenant was provided an opportunity to provide the condition inspection report following the hearing. The Tenant provided a copy of a condition inspection report dated December 1, 2018, which is signed by the Landlord and Tenant. The inspection report indicates that the rental unit walls had scratches and nicks.

The Tenant testified that the condition inspection report from 2017, was completed by the Landlord in their office. He testified that a new inspection in 2017 was never carried out.

Closet Door Damage

The Landlord testified that the bifold closet door was off its hinges and needed to be replaced. The Landlord replaced the door at a cost of \$75.00. The Landlord provided one photograph of a bifold door off its hinges.

In reply, the Tenant testified that the top door clip was broken and the door popped out of the track. He testified that the door was not damaged. He testified that the maintenance person said he would have it repaired but never did.

Light Bulb

The Landlord is seeking \$30.00 for the cost to replace light bulbs in the unit and \$30.00 for the replacement cost of a microwave light bulb. The Landlord provided an invoice for the replacement costs of the light bulbs.

In reply, the Tenant testified that there were some light bulbs that were burned out at the start of the tenancy and that he replaced lightbulbs during the tenancy. He testified that he never noticed an issue with a burned out microwave light bulb.

Shower Door

The Landlord's application included a claim for \$150.00 for cleaning a bathroom shower door. The Landlord was provide an opportunity to provide testimony on his claims and did not provide any testimony with respect to this claim. Since the Landlord failed to pursue this claim at the hearing, the claim is dismissed without leave to reapply.

Carpet Cleaning

The Landlord testified that the carpet was not cleaned by the Tenant at the end of the tenancy. The Landlord is seeking the amount of \$150.00 for carpet cleaning. The Landlord provided a photograph showing the carpet area in front of the Laundry area and an invoice in the amount of \$150.00.

In reply, the Tenant testified that he did have the carpet cleaned by his cleaning person who used a carpet shampoo machine. He testified that there was a stain on the carpet located by the washing machine. He testified that that the current Tenant told him that the Landlord only spot cleaned the carpet in that area.

Security Deposit

The Landlord is seeking to retain the security deposit of \$900.00 in full or partial satisfaction of his claims.

Analysis

Based on the evidence before me, the testimony of the Landlord and Tenant , and on a balance of probabilities, I make the following findings:

Unpaid Rent

Effective December 11, 2017, the Act changed to provide that most fixed term tenancy agreements that were still in effect and which contained a vacate clause became no longer enforceable.

I find that the fixed term tenancy agreement tenancy agreement that the parties entered into on December 1, 2015, contained a vacate clause that required the Tenant to move out of the rental unit on November 30, 2016. The vacate clause was enforceable.

The parties entered into a new tenancy agreement starting on December 1, 2016, to continue until November 30, 2017. The vacate clause was enforceable. The changes to the Act regarding vacate clauses did not apply to this tenancy agreement.

Since the initial tenancy agreement was set to end on November 30, 2016, with the requirement to vacate, and the parties entered into a new tenancy agreement, the previous terms and conditions of the tenancy did not apply to the new agreement. The Landlord was not required to follow the rent increase provisions of the Act.

I find that the tenancy agreement the parties entered into on December 1, 2016, required the Tenant to pay monthly rent of \$1,800.00 to the Landlord. I find that the agreement is signed and initialed by the Landlord and Tenant. I find it is not reasonable to accept the Tenant's submission that he signed the tenancy agreement which did not specify the amount of monthly rent. The Tenant provided no explanation on why he would sign an agreement where the monthly rent is blank. In addition, the Tenant could not recall during the hearing other details regarding the tenancy agreement. He could not recall whether or not the tenancy agreement contained a move out clause.

I have considered whether or not the Landlord's failure to address the issue of the rent owing each month, and the increasing monthly shortfall affects his claim.

Estoppel is a legal rule that prevents somebody from stating a position inconsistent with one previously stated, especially when the earlier representation has been relied upon by others.

I find that the Landlord did not address the conflict regarding the rent with the Tenant at the time of entering into the new tenancy agreement and the Landlord took no action to address the rent owing issue for the next 15 months of the tenancy. The Landlord remained silent. The Tenant believed he was paying the correct amount of rent each month.

In the circumstances, I find that Landlord had a duty to inform the Tenant about the amount of rent owing and the growing shortfall and deal with the issue prior to the end of the tenancy. Based on the Landlord's silence and the Tenants belief he was paying the required amount, I find that the Landlord is estopped from recovering the rent shortfall.

The Landlord's claim for \$467.40 in unpaid rent is dismissed without leave to reapply.

Damage to Walls

I accept the Tenant's documentary evidence of a condition inspection report that shows the condition and state of repair of the rental unit at the start of the tenancy.

The Landlord has provided insufficient evidence that the Tenant is responsible for the damage to the walls. The Landlords claim for \$500.00 is dismissed.

Closet Door Damage

I find that the Landlord has provided insufficient evidence to support his claim that the bifold door was damaged and needed to be replaced. I find it is not reasonable to claim \$75.00 to set the door back into its track. There is insufficient evidence from the Landlord to establish that the Tenant is responsible for the door coming off its track. The Landlords claim for \$75.00 is dismissed.

Light Bulbs

The Landlord's claim for \$30.00 to replace a microwave lightbulb is dismissed. I do not find it to be reasonable for the Tenant to be responsible to replace a light bulb in a microwave appliance.

The Landlords claim for \$30.00 for the replacement of light bulbs in the rental unit is granted. The Tenant testified that he replaced bulbs during the tenancy but did not testify that all the light bulbs were working at the end of the tenancy.

Carpet Cleaning

I find that the Tenant left the carpet with stains and he is responsible for the Landlords costs to have the carpet cleaned. I find that the Landlords claim of \$150.00 for carpet cleaning is reasonable and I award the Landlord the amount of \$150.00.

Awards

The Landlord has established a monetary claim in the amount of \$180.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Security Deposit

I find that the Landlord has established a total monetary claim of \$280.00 comprised of cleaning costs and the \$100.00 fee paid by the Landlord for this hearing.

I authorize the Landlord to withhold \$280.00 from the security deposit of \$900.00.

The Landlord is ordered to return the balance of the security deposit in the amount of \$620.00 to the Tenant. The Tenant is granted a monetary order in the amount of \$620.00.

Conclusion

The Landlord has established a monetary claim in the amount of \$280.00.

I authorize the Landlord to withhold \$280.00 from the security deposit of \$900.00.

The Landlord is ordered to return the balance of the security deposit in the amount of \$620.00 to the Tenant. The Tenant is granted a monetary order in the amount of \$620.00.

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: October 24, 2018

Residential Tenancy Branch