



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNDCL-S

Tenant: MNSD

Introduction

On February 9, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for damages, to apply the security deposit to the claim, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

On March 9, 2018, the Tenant submitted an Application for Dispute Resolution under the Act. The Tenant requested a Monetary Order for the return of the security deposit, and to be compensated for the cost of the filing fee. The Landlord’s Application was crossed with the Tenant’s Application and the matter was set for September 7, 2018, for a participatory hearing via conference call.

On September 7, 2018, the Landlord attended the hearing; however, the Tenant did not attend. The original Arbitrator acknowledged there may be a scheduling conflict on the cross-applications and proceeded solely on the Landlord’s monetary claim. The original Arbitrator completed their Decision, dated September 7, 2018. When the Tenant received the Decision, they made an Application for a Review Consideration on the grounds of being unable to attend the original hearing on September 7, 2018. As a result, the Review Consideration Arbitrator ordered that a new hearing for the cross-Applications to take place.

The Landlord and the Tenant’s Legal Counsel (the “Tenant”) attended the new hearing granted by Review Consideration and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before 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 Matters

During the hearing, the Tenant testified that she submitted 19 pages of evidence to the Residential Tenancy Branch. I was unable to locate that evidence package during the hearing and subsequently permitted the Tenant to resubmit the evidence package as she had already served it to the Landlord in accordance with the Act. After the hearing, I located the Tenant's evidence package (mislabelled by the Residential Tenancy Branch), reviewed it and considered the contents in my Decision.

During the hearing the Landlord stated that she was out of the country on a date that the Tenant claimed that the locks were changed on the rental unit. I permitted the Landlord to submit a copy of her airline ticket that showed she flew back from China on a specific date.

Issues to be Decided

Landlord:

Should the Landlord receive a Monetary Order for damages, in accordance with Section 67 of the Act?

Should the Landlord be authorized to apply the security deposit to the claim, in accordance with Sections 38 and 72 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Tenant:

Should the Tenant receive a Monetary Order for the return of the security deposit, in accordance with Section 38 and 67 of the Act?

Should the Tenant be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord and the Tenant agreed on the following terms of the tenancy:

The one-year, fixed-term tenancy began on August 1, 2017. The monthly rent of \$3,500.00 was due on the first of each month. The Landlord collected a security deposit of \$3,500.00 and still holds that amount.

Landlord's Evidence:

The Landlord testified that she and the Tenant had been communicating about a mouse problem in the rental unit. On December 18, 2017, the Tenant told the Landlord that she wanted to move out of the rental unit. The Landlord refused to agree to the end of the tenancy. The Landlord stated that on January 10, 2018, the Tenant told her that she was going to move out.

The Landlord stated that she flew back from China on January 21, 2018, to deal with the tenancy issues. After several attempts to contact the Tenant, the Landlord attended the rental unit on January 24, 2018. The Landlord, as a result of looking through the windows, believed that the Tenant had moved her belongings from the rental unit. The Landlord put a note on the Tenant's door, submitted it as evidence, that directed the Tenant to contact the Landlord, or otherwise, that the Landlord would enter the rental unit on January 25, 2018. On January 25, the Landlord entered the rental unit and noted that the Tenant had moved out of the unit. The Landlord stated she called a locksmith to change the locks and texted the Tenant, with no response. The Landlord stated that the Tenant still had the original keys/fob and a garage remote control.

The Landlord testified that on February 1, 2018, she received a letter dated January 11, 2018, via registered mail, from the Tenant that stated the Tenant was giving notice to end the tenancy on January 31, 2018, due to the "health issue in the unit". The Tenant referred to the worsening mouse issue as the reason she was ending the tenancy.

The Landlord stated she received the Tenant's forwarding address on February 8, 2018.

The Landlord stated that the Tenant did not pay the February 2018 rent. The Landlord is claiming a loss of rent for the rest of the fixed-term tenancy as, pursuant to the Strata bylaws, she was unable to obtain approval to re-rent the unit.

The Landlord called Witness TD ("TD"), who is the president of the Strata Council. TD provided affirmed testimony that there are a limited number of rentals that are allowed within the Strata. When the Landlord's Tenant moved out of the rental unit, the Landlord had to apply to the Strata again and wait until there was another rental unit

approved. TD confirmed that the Landlord has not had approval to rent her unit out and that the unit is still empty.

TD testified that he spoke with the Tenant regarding the mouse problem and advised that the Strata pays a monthly fee for a pest control company to monitor and control pests outside of the strata units. TD indicated that the Landlord and Tenants are responsible for any pest issues inside of the rental unit.

The Tenant chose not to ask TD any questions.

The Landlord stated that she communicated with the Tenant about the mice and offered to pay the Tenant half of any service fees in relation to hiring a pest control company.

The Landlord claimed that the Tenant abandoned the rental unit and stopped paying rent prior to the end of the fixed-term tenancy. The Landlord acknowledged that she mistakenly charged too much for the security deposit. The Landlord is claiming a loss of rent from February 2018-July 2018, for six months, in the amount of \$21,000.00.

Tenant's Evidence:

The Tenant stated that soon after moving into the rental unit, she and her son saw a mouse and her son was very scared. The Tenant called the Landlord and the Landlord suggested speaking with the Strata Council to discuss means to address the mouse. The Tenant stated she called a pest company to attend to the rental unit, mend access points and to set traps. The Tenant provided an invoice of \$270.00.

The Tenant stated that she was in contact with the Landlord about her wishes to move out of the rental unit. The Tenant acknowledged that she sent the notice to end tenancy letter, dated January 11, 2018, to the Landlord, via registered mail. The Tenant did not provide any documentary evidence of the Landlord agreeing to the end of the tenancy.

The Tenant stated that the Landlord changed the locks on the rental unit on or about January 18, 2018 and that the Tenant's belongings were still remaining in the unit. The Tenant stated she could not enter the property.

The Tenant stated that she moved out on January 24, 2018 but did not explain how she was able to enter the property. The Tenant said that she made an appointment to meet with the Landlord to provide her the keys and fob for the unit; however, the Landlord did not attend. The Tenant mailed the keys and fob to the Landlord.

The Tenant testified that the Landlord did not provide livable conditions, agreed to the end of the tenancy, and believed that it was the Landlord's responsibility to pay for the full amount for pest control.

Analysis

Residential Tenancy Policy Guideline 16 ("PG 16"), refers to compensation for damage or loss between parties in a tenancy.

"The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether; a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement; loss or damage has resulted from this non-compliance; the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and, the party who suffered the damage or loss has acted reasonably to minimize that damage or loss."

Section 45(2) of the Act states that a Tenant may end a fixed-term tenancy by giving the Landlord a notice to end tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the Tenancy Agreement as the end of the tenancy; and, is the day before the day in the month that rent is payable under the Tenancy Agreement.

Based on undisputed evidence, I find that the Tenant entered into a Tenancy Agreement with the Landlord that required the Tenant to pay monthly rent of \$3,500.00 by the first day of each month and that the Tenant has not paid rent from February 2018 through to July 2018. As the Tenant cannot opt out of the tenancy early and is required to pay rent pursuant to Section 26(1) of the Act, I find that the Landlord has established a monetary claim in the amount of \$21,000.00 in outstanding rent. (the amount claimed by the Landlord).

Before awarding a monetary claim to the Landlord, I have to consider PG 16 and Section 7(2) of the Act that states a Landlord or Tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the Regulations or their Tenancy Agreement must do whatever is reasonable to minimize the damage or loss.

I accept both the Landlord's and Witness TD's undisputed evidence that the Landlord was unable, due to Strata bylaws, to mitigate her losses by finding another tenant for the rental unit. Therefore, I find that Landlord attempted to mitigate her losses by enquiring with the Strata and placing herself back on the wait list to find a new tenant for the rental unit.

I accept that the Landlord collected double the amount of the security deposit from the Tenant. However, I find the Tenant did not exercise her option, pursuant to Section 19 of the Act, to deduct the overpayment from any future rent payments.

I find, due to the short term of the Tenant's tenancy, that the Landlord should take responsibility for the full cost of the pest control costs paid by the Tenant, in accordance with Section 32 of the Act. I find that the Tenant has established a monetary claim in the amount of \$270.00.

I find, in accordance with Section 38 of the Act, that the Landlord applied for dispute resolution to retain the security deposit within 15 days of receiving the Tenant's forwarding address. As such, I find that the Landlord lawfully held the security deposit while making their monetary loss claim.

I issue a Monetary Order in the Landlord's favour under the following terms, which allows the Landlord to recover unpaid rent and the filing fee for this Application, less the amount for pest control and the Tenant's security deposit:

Item	Amount
Unpaid Rent: Feb-July 2018	\$21,000.00
Filing Fee for this Application	100.00
Less Pest Control Costs	-270.00
Less Security Deposit	-3,500.00
Total Monetary Order for Landlord	\$17,330.00

Based on these determinations I grant the Landlord a Monetary Order for the balance of \$17,330.00, in accordance with Section 67 of the Act.

Conclusion

I dismiss the Tenant's Application for the return of the security deposit and do not grant reimbursement for the filing fee.

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$17,330.00. In the event that the Tenant does not 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 *Residential Tenancy Act*.

Dated: March 7, 2019

Residential Tenancy Branch