



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent, for damage to the rental unit, and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 63 minutes.

The hearing began at 1:30 p.m., with me and the landlord present. The tenant called in late at 1:39 p.m. I informed the tenant about what occurred in his absence. The hearing ended at 2:33 p.m.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord confirmed receipt of the tenant's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application and the landlord was duly served with the tenant's evidence package.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to correct the spelling of the tenant's first surname and to include his second surname. Both parties consented to this amendment during the hearing. I also amend the landlord's application to include February 2019 rent and utilities of \$2,350.00 plus \$135.00 and the door and walls damage estimate of \$6,185.00 from the original \$6,000.00. The tenant did not object to dealing with these claims during the hearing.

Issues to be Decided

Is the landlord entitled to a monetary award unpaid rent, for damage to the rental unit and for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 1, 2018 and ended on January 15, 2019. Monthly rent in the amount of \$2,350.00 was payable on the first day of each month. A security deposit of \$1,175.00 was paid by the tenant and the landlord continues to retain this deposit. Both parties signed a written tenancy agreement for a fixed term from August 1, 2018 to July 31, 2019. A copy of the tenancy agreement was provided for this hearing. Move-in and move-out condition inspections and reports were completed for this tenancy. No written permission was given by the tenant to the landlord to keep any part of his security deposit and an application to retain it was made by the landlord on January 6, 2019. The tenant provided a forwarding address in writing to the landlord on February 28, 2019 by way of a letter.

The landlord seeks \$2,350.00 for rent and \$135.00 for utilities for each month from January to February 2019. He said that because the tenant breached the fixed term tenancy agreement and did not pay rent or utilities for either month, he owed money to the landlord. He provided a spreadsheet of rent paid by the tenant but claimed that he still had an outstanding balance, despite payments made in January 2019. He claimed that he re-rented the unit to new tenants on March 1, 2019. He said that he posted advertisements online and he believes he did four showings of the rental unit. The tenant disputed these claims, indicating that he paid for half a month's rent of \$1,175.00 to the landlord because he vacated on January 15, 2019, due to the landlord issuing him a notice to end tenancy. He claimed that he was not responsible for any further rent to the landlord because the landlord ended the tenancy, not him.

The landlord seeks \$420.00 in late fees from the tenant, saying that he paid rent late each month. He said that he provided for the late fees in the addendum to the tenancy agreement which asks for \$30.00 per day for late rent. The tenant disputed the landlord's claim said that he did not pay rent late during the tenancy.

The landlord seeks \$3,000.00 in liquidated damages because the tenant breached the fixed term tenancy agreement and vacated early on January 15, 2019 instead of July 31, 2019. He

said that this was contained in paragraph 5 of the addendum to the tenancy agreement. He claimed that the tenant caused him “stress” and a loss of time for having to travel from his home in Washington State, U.S.A., to the rental unit in B.C. The tenant disputed the landlord’s claim, indicating that the landlord cancelled the tenancy agreement over drywall issues not rent, the landlord told lies, and the property was dirty.

The landlord seeks \$6,185.00 for the tenant changing the doors and walls inside the rental unit. He said that the contractor is still completing the work to fix the damages. He provided an invoice for the above amount, stating that he only paid half the invoice by cheque, because the work was not done yet. He stated that he did not provide photographs of the damages or explain what they were because the invoice was a legal document from the contractor and was “good enough” for evidence. The tenant disputed the landlord’s claim, indicating that the landlord’s wife asked him to do the alterations to the doors and walls, he fixed it for free, and she asked him to carry the drywall materials for her because she was unable to do so.

Analysis

Rent

Section 26 of the *Act* requires a tenant to pay rent on the date indicated in the tenancy agreement, which in this case is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant’s non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I dismiss the landlord’s claim of \$2,350.00 for rent and \$135.00 in utilities for January 2019, without leave to reapply. I find that the tenant paid for half of January 2019 rent of \$1,175.00. I find that the landlord failed to provide a proper accounting of the rent owed by the tenant. He provided a spreadsheet of the rent paid and the outstanding balance each month. However, he did not provide the outstanding balance for the full month of January 2019, the last month of the tenant’s tenancy. In there, he simply indicated that the tenant paid rent of \$587.50 each on January 2 and January 7, totaling \$1,175.00, which is half a month’s rent for January 2019. The tenant claimed that he only paid half a month’s rent because he vacated on January 15, 2019 and the landlord ended the tenancy. The landlord claimed that the tenant’s payment of \$1,175.00 paid for the previous outstanding balance but he did not update the balance to reflect this in his spreadsheet. Further, the landlord indicated another rent payment from the tenant of \$1,047.00 on January 10, 2019, which is almost the remainder of January 2019 rent, minus \$128.00.

I dismiss the landlord’s claim for rent of \$2,350.00 and utilities of \$135.00 for February 2019, without leave to reapply. I find that the landlord failed to provide documentary proof of his

efforts to re-rent the unit. He did not provide a copy of the new tenancy agreement showing that new tenants moved in on March 1, 2019. He did not provide a copy of the advertisements he said that he immediately posted on January 16, 2019, the day after the tenant moved out. He did not provide a copy of any inquiries for the rental unit, any showings he conducted, or any other information regarding his efforts to re-rent the unit.

Late Fees

I dismiss the landlord's claim for late rent fees of \$420.00, without leave to reapply. The landlord's provision in the addendum to the tenancy agreement is illegal and unenforceable as it attempts to charge the tenant \$30.00 per day. The maximum allowable amount to charge for late fees is \$25.00 per month as per section 7(1)(d) of the *Regulation*. This correct amount of \$25.00 was not provided by the landlord in the tenancy agreement or the addendum, as required by section 7(2) of the *Regulation*. The landlord also failed to provide a breakdown for the late fees, indicating that the tenant was late every month in rent, which the tenant disputed.

Liquidated Damages

Residential Tenancy Policy Guideline 4 provides information regarding liquidated damages. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

I find that the cost of re-renting a unit to a new tenant is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants numerous times. In this case, the landlord did not provide copies of any advertisements posted to re-rent the unit. He said that some costs were paid for the advertisements but did not supply any receipts. The landlord did not know how many inquiries were answered for the unit and guessed that he completed four showings of the unit.

Although the tenant vacated the rental unit prior to the end of the fixed term on July 31, 2019, I find that the landlord did not show how the \$3,000.00 claimed for liquidated damages in paragraph 5 of the addendum to the tenancy agreement was a genuine pre-estimate of the loss. This amount is well above the \$2,350.00 that the tenant was paying towards rent each month, which I find to be a penalty. Further, the landlord said that this accounted for his "stress" and time for having to travel from Washington State in the U.S.A., where he currently lives, to the rental unit, to deal with the tenant. The tenant is not responsible for where the landlord chooses to live, or the fact that he chose to rent out a unit in B.C. These are the costs that the landlord must bear for doing business as a landlord.

For the above reasons, I dismiss the landlord's claim of \$3,000.00 for liquidated damages without leave to reapply.

Other Damages

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the landlord's claim for \$6,185.00 for repairing the door and walls inside the rental unit, without leave to reapply. I find that the landlord failed part 3 of the above test by not providing a receipt for the work done. The landlord provided one handwritten invoice with a balance due for \$6,185.00. The contractor who is supposedly performing this repair work and provided the invoice, did not testify at this hearing. The landlord said that the work was not done yet and he did not know when it would be complete. Yet, the landlord re-rented the property to new tenants on March 1, 2019 and they were living there with these supposed defects. I do not know whether the landlord will get all the work done and pay for it all.

The landlord said that he paid half the amount of the above invoice to the contractor by cheque, but he did not provide proof of this payment, by way of the cancelled cheque or from his bank account. The tenant claimed that he did not complete any damage and that the landlord's wife approved the work he did and paid for himself. The landlord also failed to provide photographs of the damage or explain exactly what type of damage was done, pointing only to the invoice as a "legal document."

As the landlord was unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the tenant.

The landlord continues to hold the tenant's security deposit of \$1,175.00. Over the period of this tenancy, no interest is payable on the deposit. I order the landlord to return the full security deposit of \$1,175.00 to the tenant, within 15 days of receiving this decision. I issue a monetary order to the tenant for this amount.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$1,175.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: May 01, 2019

Residential Tenancy Branch