



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PORT ALBERNI NON-PROFIT HOUSING ASSOCIATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Tenant: MNSD
 Landlord: MNDC MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on January 27, 2020.

The Landlord and the Tenant both attended the hearing. The Landlord confirmed receipt of the Tenant's application and evidence and did not take issue with service of this package. The Tenant confirmed receipt of the Landlord's application, first amendment, and evidence, which was served in early December 2019.

The Landlord filed another amendment and evidence package for this hearing. The Landlord stated she hand delivered this package on January 14, 2019. The Tenant confirmed receipt of this package on that day, but identified that it was served to her late (not in accordance with the rules of procedure).

Residential Tenancy Branch Rule of Procedure 3.14 and 3.15 requires that the applicant's evidence to be relied upon at a hearing must be received by the Residential Tenancy Branch and the respondents not less than 14 days before the hearing. As this evidence and amendment was served to the Tenant late, I will not consider it.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Landlord

- Is the Landlord entitled to compensation for damage or loss under the Act?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

Tenant

- Is the Tenant entitled to the return of the security deposit held by the Landlord?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in my decision set out below, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agree that:

- Monthly rent was \$375.00 and was due on the first of the month.
- The Landlord still holds \$187.50 as a security deposit
- The Tenant moved into this rental unit in the summer of 2015, and she moved out on October 31, 2019, and returned the keys on November 1, 2019.
- The Tenant provided and the Landlord received the Tenant's written Notice to End Tenancy on October 15, 2019.
- This notice stated that the Tenant would be moving out by the end of October 2019.
- The Tenant stated she sent her forwarding address in writing (letter dated November 12, 2019) on November 14, 2019, but did not provide any proof of service for this document or proof that she mailed it on that date. The Landlord stated she received this forwarding address on November 19, 2019.
- After back and forth regarding when the final inspection was to be completed, a move-out inspection was done with the Tenant present on November 18, 2019.

- The Tenant did not sign the move-out inspection because she did not agree with what the Landlord had laid out and the manner in which the Landlord portrayed the condition of the unit.

The Landlord provided a monetary order worksheet as part of her initial application package. Although the Landlord submitted another updated worksheet along with supporting evidence, photos and invoices leading up to the hearing, as stated above, that package was late, and will not be considered. The only worksheet admitted into evidence states that the Landlord is seeking the following items:

- 1) \$375.00 – November 2019 rent

The Landlord stated that the Tenant provided written notice that she was vacating on October 15, 2019, for the end of that month. The Landlord is seeking rent for November because they did not get the keys back until November 1, 2019, and they had to clean and prepare the unit before they could re-rent it. The Landlord stated they re-rented the unit as of December 15, 2019 but due to the short notice, and not getting the keys back until November 1, 2019, it was too late to re-rent it for November.

The Tenant does not dispute that she gave short notice.

- 2) \$70.00 – Repairs and Maintenance estimate
- 3) \$70.00 – Cleaning estimate
- 4) \$600.00 – Painting and materials estimate

The Landlord is seeking the above 3 items because she stated the Tenant left the rental unit dirty, with several holes in the walls, and in need of general repairs. The Landlord also stated the unit needed to be repainted. The Landlord stated the rental unit was repainted around 4 years ago. The Landlord did not provide any written receipts or estimates from contractors or companies to substantiate the totals above. The only receipts and invoices for these items were included in the Landlord's late evidence package, which is not admissible. The Landlord stated that at the time they did this worksheet, they estimated it would take 3.5 hours for cleaning and 3.5 hours for maintenance/repairs. The Landlord pointed to the condition inspection report to show the state of repair.

The Tenant denies that she caused any damage beyond reasonable wear and tear. The Tenant stated that she cleaned before she left and did not sign the move-out portion of the condition inspection because she did not agree with the Landlord.

5) \$58.62 – Cleaning supplies

The Landlord provided a receipt for this item to show what they spent on cleaning supplies. The Landlord stated that the Tenant left the unit uncleaned and the kitchen and bathroom required heavy cleaning prior to being able to re-rent it. The Landlord pointed to the move-out inspection report as proof, but the Tenant stated she did not sign it because it was not accurate. The Landlord did not have any admissible photo evidence to show what the condition of the rental unit was at the end of the tenancy.

The Tenant stated she cleaned the unit, and does not feel it should need to be cleaned again.

6) \$700.00 – Bed Bug Treatment

The Landlord stated that the Tenant's rental unit, and the unit next door had bed bug problems, which required remediation. The Landlord pointed to an invoice from December 2, 2019, where she paid \$1,764.00 to have both rental units treated for bed bugs. The Landlord stated she attended the unit with the expert after the tenancy ended and he identified that there was evidence of a bed bug infestation in both of the units. Subsequently, he rendered the treatments, and the Landlord paid the above amounts. The Landlord stated that the Tenant brought up her concerns with bed bugs in September 2019, but she did not ask for remediation at that time. The Landlord stated that they believe it is the Tenant's fault there are bed bugs and it wasn't until the Tenant vacated that they were dealt with.

The Tenant denied that there were bed bugs, and stated that she only ever mentioned bed bugs to the Landlord because she was concerned about them infesting her rental unit, not because they had infested the unit. The Tenant stated that a bed bug problem should be the responsibility of the Landlord, especially if they are also in other units.

Analysis

Landlord's Application

With respect to the Landlord's application to recover money for damage or loss, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I turn to the first item on the Landlord's list, which is for November 2019 rent in the amount of \$375.00. I turn to section 45 of the Act:

Tenant's notice

- 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.

I find the Tenant breached section 45 of the Act by failing to give at least one month written notice to the Landlord. As such, I find the Landlord is entitled to compensation, as they suffered a loss of rent due to the Tenants breach of the Act. I note the Tenant did not return the keys to her unit until November 1, 2019, and only gave around 2 weeks notice that she would be leaving. The Landlord was able to re-rent the unit for December 15, 2019, but I accept that it would have been difficult to re-rent the unit for November, given such short Notice by the Tenant. Ultimately, I find the Tenant is responsible for November 2019 rent in full.

Condition Inspection Report

Sections 23 and 35 of the Act states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

In this case, I note that the parties do not dispute the contents of the move-in portion of the condition inspection report. As such I find this part of the condition inspection report provides reliable evidence with respect to the condition of the rental unit at the start of the tenancy.

With respect to the move-out portion of the condition inspection report, I find the document before me is of limited value in determining the condition of the unit. On one hand the Tenant stated she cleaned the unit, and on the other hand, the Landlord stated the unit was not sufficiently cleaned. The parties also do not agree to what, if any, damage was done. I note the Tenant did not sign the move-out inspection report because she did not agree with the Landlord's characterization of the unit. Ultimately, I am not satisfied the unsigned move-out portion of the condition inspection is a sufficiently reliable indicator as to the condition of the rental unit at the end of the tenancy. I have placed little weight on this part of the evidence.

Further, given the absence of corroborating evidence with respect to the condition of the rental unit at the end of the tenancy, I rely on oral testimony only in making my determinations. Had the Landlord served their evidence within the acceptable time frame leading up to this hearing, they may have had further evidence that could be used to support the condition of the unit.

Next, I turn to items #2 through #4 above. I note the Landlord has provided no admissible documentary evidence to show or substantiate the repair costs (\$70.00), the cleaning costs (\$70.00), and the painting estimate (\$600.00). The Landlord did not have any admissible written receipts or estimates from contractors or companies to verify these totals. I also note there is a lack of evidence showing the existence of the damage, and that the Tenant caused this damage. I note that the Landlord must, in addition to proving that the Tenant directly caused the damages, substantiate the *value*

of the loss. I find the Landlord has failed to sufficiently substantiate any of the above amounts. There is a problematic lack of photos, corroborating documentation, and actual invoices/receipts for these items. I dismiss the Landlord's request for compensation on items 2-4.

With respect to item #5, I note the Landlord provided a receipt for this item to show what they spent on cleaning supplies. However, as stated above, I find the Landlord has not sufficiently proven the condition of the rental unit at the end of the tenancy, such that I could find the Tenant is responsible for cleaning supplies. There is a lack of supporting photos, documentation, and witness testimony to show the unit was dirty and required the degree of cleaning the Landlord has asserted.

With respect to item #6 on the landlord's worksheet, I note the Landlord is seeking to recover \$700.00 to cover the cost of bed bug treatments. The Landlord believes the Tenant caused the bed bug problem. The Landlord stated that the Tenant mentioned her concerns about bed bugs in September 2019, but the Tenant stated she did not bring this up because she had an active infestation, but rather because she was concerned about getting them. The Tenant denies that there were any bed bugs in her unit but she agrees she was concerned about getting them. I note the Landlord brought in a bed bug expert after the tenancy ended, and this expert examined this rental unit and the adjacent unit. The Landlord stated that the expert found evidence of bed bugs in both units, and treated both areas, which amounted to \$1,764.00.

When looking at the totality of the evidence and testimony on this matter, I do not find it sufficiently clear how the Landlord would have known, with any degree of certainty, that the Tenant was the source of the problem, given they were present in more than one unit. I find the Landlord has failed to sufficiently demonstrate that the Tenant is responsible for this amount.

Tenant's Application

The Tenant stated she is looking for the return of her security deposit because she never reached an agreement with the Landlord regarding the deposit at the move-out inspection on November 18, 2019.

With respect to the Tenant's application to recover the security deposit, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding

address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, the latter of those two dates is the date the Tenant provided her forwarding address in writing, as she had already vacated the unit and returned the keys by the time she gave her forwarding address. Although the Tenant stated she provided her forwarding address in writing on November 14, 2019, she did not provide any proof of service or proof of mailing. The Landlord stated she did not receive the letter until November 19, 2019. In the absence of evidence showing when the Tenant provided her letter, I find the Landlord received the Tenant's forwarding address in writing on November 19, 2019, the day she admits receiving it.

Therefore, the Landlord had until December 4, 2019, to either repay the security deposit to the Tenant or make a claim against it by filing an application for dispute resolution. The Landlord filed their application on December 3, 2019. Accordingly, I find the Tenant is not entitled to recover double the amount of the security deposit, as the landlord complied with the *Act* in this regard. The security deposit still held by the Landlord will be addressed further below.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. However, since both parties were partly successful, I decline to award the filing fee costs. Section 72 of the *Act* also allows me to authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenant. In summary, I grant the monetary order in favour of the Landlord based on the following:

Claim	Amount
Rent for November 2019	\$375.00
Less:	
Security Deposit currently held by Landlord	(\$187.50)
TOTAL:	\$187.50

Conclusion

The Landlord is granted a monetary order in the amount of **\$187.50**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: January 29, 2020

Residential Tenancy Branch