



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes

MNR, MNDC, MNSD, & FF

Introduction

This hearing dealt with cross applications by the parties. The landlord is seeking a monetary claim related to non-payment of rent and breach of the fixed term lease. The landlord also seeks to retain the tenant's security deposit plus interest in partial satisfaction of this claim. The tenant seeks a monetary claim for the return of his rent and for the return of his security deposit plus interest.

Issues to be Determined

Has the tenant breached the fixed term tenancy agreement between himself and the landlord? Does the landlord have the right to retain the tenant's security deposit plus interest?

Background and Evidence

The parties entered into a fixed term tenancy agreement on August 1, 2008 for the monthly rent of \$1,175.00, a security deposit of \$587.50 and a pet deposit of \$587.50. In addition to this sum the tenant also paid the sum of \$25.00 for parking. The tenant gave the landlord the sum of \$2,375.00 on August 1, 2008.

The tenant first viewed the suite on July 28, 2008 and subsequently signed the tenancy agreement and paid the money on August 1, 2008. The tenant stated that when he viewed the rental unit the current tenants had area rugs over top the rugs in the rental unit which he did not look under.

During the move-in condition inspection the parties disputed the condition of the rental unit. The tenant noticed that the rugs, now that the area rugs were gone, had stains and he felt that the rental unit was no longer acceptable. He requested that the landlord replace the carpets in the rental unit. The landlord was not willing to replace the carpets and the relationship fell apart.

The landlord stated that the tenant refused to sign the move in condition inspection and refused to accept the keys to the rental unit. The landlord also stated that the tenant never requested to be let out of the tenancy agreement and stated he would not take the rental unit. The tenant stated that since the landlord had misrepresented the rental unit and refused to replace the carpets he would take the rental unit. The tenant also stated that the inspection did not occur until August 5, 2008 while the landlord stated that it occurred on August 1, 2008.

The landlord attempted to return the tenant's pet deposit and remote deposit for the sum of \$637.50 on September 14, 2008 but it was return as no longer being a correct address. The landlord retained the tenant's money until they received a current forwarding address when served with the tenant's application for dispute resolution on February 5, 2009. They re-sent the same cheque and calculation sheet in March 2009. According the documentation from the landlord the tenant's security and pet deposits of \$1,175.00 plus the \$50.00 remote deposit was reduced by \$587.50 due to the tenant's breach of the tenancy agreement. I note that the tenancy agreement states that liquidated damages due to breach of the contract is \$300.00 and not \$587.50.

The landlord stated that they were successful in mitigating any loss by finding a new tenant effective September 1, 2008. However, the landlord states that they are entitled to liquidated damages pursuant to the tenancy agreement. The landlord also states that they retained the rent and parking of \$1,225.00 paid by the tenant which recovers any loss for August 2008.

The tenant is seeking damages in the sum of \$3,600.00 comprised of all the money provided to the landlord and the loss of two day wages. The tenant issued money to the landlord on August 1, 2008 for the total sum of \$2,425.00. The tenant stated that the landlord misrepresented the rental unit and as a result he could cancel the agreement. The tenant is seeking the lost wages on the basis of filing and appearing for this proceeding. The tenant did not provide any evidence to support his claim for \$700.00.

Analysis

Pursuant to section 16 of the *Act* the rights and obligations of both the landlord and tenant come into effect from the date that the tenancy agreement is signed whether or not the tenant ever occupies the rental unit. In the circumstances before me the tenant never occupied the rental unit.

I do not accept the tenant's submission that the tenancy contract was rendered null and avoid because of the condition of the rental unit. Although neither party provided any photographic evidence of the staining to the carpets, I am satisfied from the oral statements of both parties that the staining was largely minor but conspicuous. The staining however did not in any way affect the use of the rental unit for the purpose of a living accommodation and could have easily been covered by the use of area rugs. Alternatively, the parties could have negotiated a rent reduction or entered into discussions to mutually end the tenancy agreement.

I also reject the tenant's claim for lost wages on the basis that the tenant failed to provide any evidence to support the amount he has claimed and because this is not a cost recoverable under the *Act*. The tenant must bear his own cost to pursue his application and claim.

Regardless, the tenant signed the tenancy agreement and became obligated to fulfilling the contract. The tenant was responsible for ensuring he was satisfied with the rental unit prior to signing the contract. As a result I find that the tenant is responsible for the

rent for August 2008 for the sum of \$1,175.00 and liquidated damages of \$300.00 as agreed to in the tenancy agreement.

The landlord had the obligation of returning the tenant his deposits within 15 days of receiving the tenant's forwarding address. Although I acknowledge that the landlord attempted to meet this requirement by returning a portion of the tenant's deposits in September 2008, the landlord failed to do so when the tenant provided his actual forwarding address in February 2009. The landlord also failed to have written consent from the tenant to retain any portion of his deposits contrary to section 38 of the *Act*. The landlord was required to file an application for Dispute Resolution to retain all or a portion of the tenant's deposit. As a result I find that the landlord failed to comply with section 38(1) of the *Act* and pursuant to section 38(6) of the *Act* the landlord must return to the tenant double his deposits.

I find that the landlord has established a total monetary claim for the sum of \$350.00 and that the landlord correctly retained the tenant's payment of rent for August 2008. I also find that the tenant has established a total monetary claim for the sum of \$2,450.00 comprised of the return of double his pet and security deposits, plus the \$50.00 remote deposit and the recovery of the \$50.00 filling fee paid for this application. I also deduct the sum of \$637.50 as this amount has been provided to the tenant by cheque. If the tenant has not already cashed this cheque or cannot now negotiate the cheque the monetary Order can be correct on application by the tenant.

After deducting the amount owed to the landlord I grant the tenant a monetary Order for the sum of **\$1,462.50**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

I have granted both applications in part. After offsetting the two awards I have granted the tenant a monetary Order for the remaining balance owed of **\$2,100.00**.

Dated April 21, 2009.

Dispute Resolution Officer