



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for return of the security deposit, money owed or compensation due to damage or loss and recovery of the filing fee.

Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Background and Evidence

This fixed term tenancy began July 15, 2011 with monthly rent of \$1295.00 and a security deposit of \$647.50. The tenancy ended February 1, 2012 but had an effective end of tenancy date of July 31, 2012.

The landlord testified that the tenant on January 26, 2012, gave the landlord 5 days notice and vacated the rental unit February 1, 2012. As a result the landlord suffered a loss of rental income, and incurred costs to clean the rental unit and re-rent the rental unit.

The tenant testified that in January 2012 she noticed a sharp spike in her hydro bill even though the thermostat was turned down. The tenant stated that she then contacted the landlord by email on January 16, 2012 to have the matter looked into. The tenant stated that an electrician was then sent to the tenant's rental unit on January 26, 2012 to check the thermostat and heating. The tenant said that when the electrician went to repair the thermostat he suffered an electrical shock and advised the tenant that the electrical wiring was incorrect and could start a fire. The tenant stated that the electrician talked the entire time he was there and he told the tenant that a lot of buildings built in 2008 had electrical problems. The tenant had the electrician check a second thermostat in the rental unit and it was found to be in good condition. The tenant stated that because of the electrician's comments she was fearful that a fire could occur in the rental unit so she gave the landlord notice to vacate effective February 1, 2012.

The tenant stated that she believes she gave proper notice to the landlord as she considered this to be a frustrated tenancy. The tenant stated that she had spoken to the landlord on

January 26, 2012 after the electrician had been to the rental unit and expressed her concerns to the landlord. The tenant stated the landlord laughed when she told him about building built in 2008 having electrical problems. The landlord responded by stating that he did not recall having this conversation and that the tenant had simply sent an email to the landlord on January 26, 2012 telling the landlord that she would be vacating the rental unit February 1, 2012. The tenant acknowledged that apart from the phone conversation and email to vacate she made no effort to contact the landlord and request a second inspection by a licensed electrician to verify if in fact there was a safety concern.

The tenant stated that she had clean the rental unit, although not professionally, had signed the move out condition inspection report but she did not agree with the landlord's claim for cleaning costs.

The landlord stated that an electrician was sent to the rental unit on January 26, 2012 to replace the faulty thermostat. The electrician also checked the electrical system in the entire rental unit to ensure there were no additional safety concerns and that the tenant should not feel in danger. The landlord stated that there have not been any additional issues related to the electrical in the rental unit reported to the landlord. The landlord stated that the tenant did not contact him to request an inspection or express her safety concerns.

The landlord stated that the tenant however gave the landlord 5 days notice, vacated the rental unit and did not clean the unit when she vacated. The landlord stated that there was crayon on the walls, oil spots and the carpets had to be professionally cleaned.

The landlord stated that the final bill for the cleaning of the rental unit was \$403.20 and that the rental unit was re-tenanted effective March 1, 2012 therefore the landlord suffered a \$1295.00 loss of rental income for February 2012 only..

The landlord stated that the liquidated damages clause in the tenancy agreement allows for \$1295.00 in liquidated damages however the final amount billed to the property owner was \$725.20.

Analysis

Based on the documentary evidence and undisputed testimony of the landlord, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to a monetary order for unpaid rent, cleaning costs and liquidated damages.

The tenant acknowledged that the rental unit had not been professionally cleaned and that some cleaning may have been required, therefore I find that the landlord is entitled to the amount of \$403.20 for cleaning costs.

In regards to the landlord's claim for 4 months of unpaid rent and as the rental unit was re-rented effective March 1, 2012 the landlord is entitled to the \$1295.00 loss of rent for February 2012 only. I find that the tenant did not give the landlord proper notice per the Act and that the landlord responded in a timely manner to the tenant's request to have repairs completed in the rental unit. I do not accept that the tenancy had become frustrated as the tenant based their

notice to vacate on the idle and seemingly irresponsible conversation of the electrician and did not provide the landlord any opportunity to have the suite re-inspected to verify or disprove the tenant's safety concerns.

In regards to the landlords claim for \$1295.00 in liquidated damages the landlord in this hearing stated that the final cost to the property owner for the agent's administration fees to re-rent the unit was \$725.20.

Accordingly I find that the landlord is entitled to a monetary order for \$2423.40.

As the landlord has been successful in their application the landlord is entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the landlord has established a monetary claim for \$2423.40 in unpaid rent, cleaning costs and liquidated damages. The landlord is also entitled to recovery of the \$100.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$647.50 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$1875.95**.

If the amount is not paid by the tenant(s), the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: April 17, 2012

Residential Tenancy Branch