



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Agent for the Landlord stated that the Landlord sent the Application for Dispute Resolution and evidence to the Tenant, via registered mail, on March 14, 2012. The Tenant stated that he only received these documents on May 01, 2012. The Tenant declined the opportunity to request an adjournment for the purposes of reviewing or responding to the documents he received on May 01, 2012.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for unpaid rent/loss of revenue; to compensation for cleaning the rental unit; for compensation for witness fees; to retain all or part of the security deposit paid by the Tenant; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on May 01, 2005; that during the latter portion of this tenancy the Tenant was required to pay monthly rent of \$1,060.00 by the first day of each month; that the Tenant paid a security deposit of \$500.00 on April 05, 2005; that the Landlord returned \$75.00 of the security deposit on July 14, 2005; and that the Tenant provided the Landlord with a forwarding address, via email, on March 01, 2012.

The Landlord and the Tenant agree that on January 31, 2012 the Tenant provided the Landlord with written notice to end the tenancy at the end of February of 2012 and that the Tenant vacated the unit on February 28, 2012.

The Landlord and the Tenant agree that a Condition Inspection Report was completed on April 01, 2005; that there was a "preliminary inspection" on February 13, 2012; that the Landlord spoke with the Tenant and scheduled a time for a final inspection of the rental unit for February 29, 2012; that a few days prior to February 28, 2012 the Tenant spoke with the Landlord and requested the inspection be changed to February 28, 2012; that the Landlord agreed to reschedule the inspection to February 28, 2012; that the Tenant did not attend the inspection on February 28, 2012; that the Landlord telephoned the Tenant and proposed that the unit be inspected on February 29, 2012; and that the Tenant informed the Landlord he was unable to attend the inspection on February 29, 2012.

The Agent for the Landlord stated that on March 05, 2012 a Notice of Final Opportunity to Schedule a Condition Inspection was mailed to the Tenant, in which a final inspection was scheduled for March 12, 2012. The Landlord and the Tenant agree that the Landlord and the Tenant were represented when the unit was inspected on March 12, 2012.

The Landlord is seeking compensation for loss of revenue for the month of March of 2012, in the amount of \$1060.00. The Agent for the Landlord stated that the rental unit was advertised for rent on February 01, 2012 and that the Landlord was unable to find a new tenant until March 29, 2012. The Agent for the Landlord stated that even if a new tenant had been found for March 01, 2012, the new tenant could not have moved into the rental unit as the Tenant had not participated in a final inspection by that date. He stated that the Landlord stopped showing the rental unit between March 01, 2012 and March 12, 2012 as the Landlord did not wish to increase cleaning costs associated to having people walking through the unit.

The Landlord is seeking compensation, in the amount of \$100.00, for cleaning the rental unit. The Landlord submitted photographs of specific areas in the rental unit, which both parties agree fairly represent the condition of those areas at the end of the tenancy. The Tenant contends that one photograph represents water damage that resulting from leak in an upper unit and that he should not be required to clean that area. He contends that the rental unit was left in reasonably clean condition. The Agent for the Landlord contends that more cleaning was required and that there is no evidence of a leak from an upper unit.

The Landlord submitted an invoice, in the amount of \$100.00, which the Agent for the Landlord stated was paid for cleaning the rental unit.

The Landlord is seeking compensation, in the amount of \$20.00, which is the amount the Landlord paid for a witness to be present at the final condition inspection report.

Analysis

Section 35(1) of the *Residential Tenancy Act (Act)* stipulates that a landlord and tenant must together inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the tenant ceases to occupy the rental unit or on another mutually agreed day. On the basis of the undisputed evidence presented at the hearing, I find that the parties complied with section 35(1) of the *Act* on March 12, 2012, at which time the Tenant was represented by a third party.

Section 35(2) of the *Act* stipulates that the landlord must offer the tenant at least two opportunities to participate in the inspection, as prescribed in the *Residential Tenancy Regulations (Regulations)*. On the basis of the undisputed evidence presented at the hearing, I find that the Landlord did comply with section 17(1) of the *Regulations* when at least two inspection times were scheduled, one of which was in writing on the approved form.

Section 67 of the *Act* authorizes me to order a tenant to pay compensation to a landlord if the tenant fails to comply with the *Act* and the landlord suffers a loss as a result of the tenant's failure to comply with the *Act*. As the Tenant was represented at the final inspection which the Landlord scheduled for March 12, 2012, I find that he did comply with his obligation to participate in a final inspection and that the Landlord is not therefore entitled to any compensation arising from a failure to comply with the legislation regarding inspections.

I note that it was the Landlord, not the Tenant, who elected to schedule the final inspection on March 12, 2012 and therefore the Tenant should not be held liable for any losses arising from the delayed inspection. In reaching this conclusion I note that the Landlord could have scheduled a final inspection for March 01, 2012 by serving the Tenant with Notice of Final Opportunity to Schedule a Condition Inspection any time prior to the end of the tenancy. The legislation does not require the Landlord to delay service of the Notice of Final Opportunity to Schedule a Condition Inspection until after the Tenant has failed to attend the first scheduled inspection. Given that the Landlord had not re-rented the rental unit by March 01, 2012, scheduling the final inspection on this date would not have resulted in a loss of revenue. I therefore dismiss the Landlord's claim for compensation for lost revenue from March of 2012.

On the basis of the photographs submitted in evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to leave the rental unit in reasonably clean condition. In my view the photographs clearly show that baseboards needed cleaning, the floor needed cleaning, the top of a cupboard needed cleaning, a towel rack needed cleaning, and the stove needed cleaning. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*, which in these circumstances is \$100.00, which is the amount the Landlord paid to clean the unit. In reaching this conclusion I find that whether or not

there was a leak in the rental unit is largely irrelevant, as the amount of cleaning arising from that alleged leak is minimal.

I decline to consider the Landlord's claim for the cost of having a witness at the final inspection, as the Tenant is not obligated to pay costs the Landlord elects to incur. I specifically note that the Landlord was not obligated to have a witness at the final inspection.

I find that the Landlord's application has some merit and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$150.00, which is comprised of \$100.00 for cleaning and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to retain this amount for the Tenant's security deposit in full satisfaction of this claim.

I find that the Landlord must return the remaining security deposit, in the amount of \$275.00 plus \$15.05 in interest on the original deposit. Based on these determinations I grant the Tenant a monetary Order for the amount \$290.15. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, 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: May 28, 2012.

Residential Tenancy Branch