



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNSD, FF

For the landlord: MNSD, OPB, MNR, MND, FF

Introduction

This hearing dealt with the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The tenant applied for a return of his security deposit and for recovery of the filing fee.

The landlord applied for authority to retain the tenants' security deposit, a monetary order for money owed or compensation for damage to the rental unit and unpaid rent, and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally, refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

The parties each submitted evidence; however the landlord said that he did not receive the evidence submission of the tenant. The tenant said that he faxed his evidence to the landlord's office and the landlord said he no longer has that office. Additionally the landlord stated that he has gone by that office and no one has contacted him about receiving the evidence. I note that the tenancy agreement listed the landlord's fax number for service of documents, which is one method listed in the Act for service of documents.

The tenant acknowledged having received the landlord's evidence.

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

Preliminary Issue: The landlord in his application asked for an order of possession based upon an alleged breach of the tenancy agreement by the tenant; however, the tenancy ended quite some time prior to the landlord filing his application. I have therefore excluded his request seeking an order of possession for the rental unit.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for a return of his security deposit and to recover the filing fee?

Is the landlord entitled to a monetary order and to recover the filing fee?

Background and Evidence

The three year, fixed term tenancy began on October 1, 2010 and monthly rent was \$1950.00.

The parties disagreed as to the date the tenancy ended, with the tenant saying the tenancy ended on May 31, 2012, and the landlord saying the tenancy ended on April 30, 2012.

Tenant's claim and evidence-The tenants' monetary claim is \$2600.00, which is their security deposit, doubled, and the tenants have also claimed that the landlord has not returned their personal property.

The tenants stated that the landlord was provided their written forwarding address in a letter, dated April 14, 2012, and hand delivered to the landlord at her address. The tenants supplied a copy of that letter as well as a written statement from tenant KR's aunt. The aunt stated that she accompanied the tenants to the landlord's home to specifically deliver the letter and to request the return of the tenants' security deposit. The letter stated that the landlord became hostile when asked for an immediate return of the security deposit.

When questioned about the circumstances, both tenants testified that the aunt spoke to the landlord, that the letter was placed on the desk in the room all parties were gathered, and that the landlord refused to accept the letter. The aunt's statement also stated that the landlord grabbed and crumpled the letter and then threw it at them as they left.

As to the tenants' claim for a return of their personal possessions, the tenant stated that a box of candy and personal items were sent to her by her parents and that the landlord has refused to turn it over.

Landlord's response-The landlord acknowledged the tenants' and the aunt's visit of April 14, but denied receiving a letter containing the forwarding address. The landlord stated that she did not receive the letter until July 3, when receiving the tenants' evidence.

The landlord stated that there was a notice of a package to be picked up at the post office, but that she has not claimed the package as her name was not on it. The landlord suggested that the package was still available for pick-up.

Landlord's claim and evidence-The landlord's monetary claim is \$2875.26, which includes unpaid rent of \$1300.00 for April, loss of revenue for May 1-19, in the amount of \$825.00, washer/dryer repair for \$280.00, cleaning and missing items for \$400.00, internet bill for \$40.26, and a bank penalty for \$30.00.

Unpaid rent-The landlord stated that she did not receive rent for April, as the rent cheque was deposited and returned due to insufficient funds. The tenants vacated the rental unit on April 5, owing rent.

Loss of Revenue-The landlord stated that she was not able to attend to re-renting the rental unit until the end of April 2012, as she was traveling until then. After returning the landlord began advertising the rental unit and was successful in finding new tenants beginning May 20. Due to this, the landlord claims she is entitled to loss of revenue for May 1-19, due to the tenants' breach of the fixed term.

In response, the tenants stated that the landlord told them on their visit on April 14 that she already had new tenants in the rental unit and that she could have them vacate if the tenants wished to complete their fixed term.

Washer repair-The landlord stated that the tenants damaged the washer due to misuse of the machine by the tenants. When questioned, the landlord confirmed that she and her family shared the laundry facility with the tenants.

In response, the tenants denied misusing the washing machine.

Cleaning the rental unit and missing items-The landlord submitted that the tenants left the rental unit in a dirty state, which required the landlords to clean. Additionally, the landlord claimed that there were several items missing from the furnished rental unit.

When questioned, the landlord stated she cleaned the rental unit and had not incurred an actual cost for the cleaning.

The tenants denied leaving the rental unit in a bad state and denied putting the pots and pans in the refrigerator as depicted in the landlord's photographs.

Internet bill-The tenants agreed owing this bill to the landlord.

Bank penalty-The landlord claimed she incurred a bank penalty when the tenants' rent cheque for February and April 2012 were returned to her.

I note the landlord also requested recovery of the filing fee and registered mail expenses in her evidence; however the landlord failed to amend her application seeking these costs. I therefore have not considered this request.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **third**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **last**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on both parties to prove damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

Tenants' application-Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant or make application for dispute resolution claiming against the security deposit.

In this case the landlord denied receiving the tenants' written forwarding address on April 14; however the tenants provided detailed, clear and consistent testimony and evidence that they and their aunt delivered the written forwarding address on April 14, 2012 to the landlord in her home. The landlord acknowledged that the tenants and their aunt came to her home on April 14 and I find it reasonable that the visit was to deliver the tenants' forwarding address. I therefore find on a balance of probabilities that the landlord received the tenants' written forwarding address on April 14, 2012 and failed to return their security deposit or file an application claiming against the security deposit within 15 days.

Based on the above, I find that the tenants are entitled to a return of their security deposit, doubled, pursuant to Section 38(6) of the *Act*.

I find the tenants' application had merit and I award them recovery of their filing fee, in the amount of \$50.00.

I find the tenants have established a monetary claim in the amount of \$2650.00, comprised of their security deposit of \$13000.00, doubled, and \$50.00 for the filing fee.

As to the tenants' claim for an order requiring the landlord to return the tenant's personal possessions, I find the tenants submitted insufficient evidence that the landlord has the box of candy mailed to one of the tenants. I therefore dismiss their request for an order requiring the landlord to return the box.

Landlord's application-

Unpaid rent for April- I find the tenants were obligated to pay the monthly rent on April 1, 2012, pursuant to the Act and the tenancy agreement and did not pay. The tenants' evidence showed that on February 1, 2012 the tenants alerted the landlord that they may vacate the rental unit by the end of March 2012, but the tenants' failed to show that this vacancy date was ever confirmed.

I therefore find the landlord has proven a monetary claim of \$1300.00 for unpaid rent for April 2012.

Loss of revenue for May- Under Section 45 (2) of the Residential Tenancy Act, among other requirements, a tenant may not end a fixed term earlier than the end of the fixed term, which in this case was May 31, 2012. I find the tenants failed to comply with the Act in this regard. However, the landlord is required to take reasonable measures to re-rent the rental unit as expeditiously as possible in order to mitigate her loss, which is step four of her burden of proof.

I find the landlord submitted insufficient evidence that she mitigated her loss. In reaching this conclusion, I was influenced by the landlord's statements that she made no attempt to advertise the rental unit at all in April due to her travels and failed to appoint an agent for the purpose of attending to her business while she was away.

This led me to conclude there was no attempt on the landlord's part to mitigate her loss for the month of May.

I therefore dismiss her claim for loss of revenue for May of \$825.00, without leave to reapply.

Washer repair- The laundry facilities were shared between the landlord and her family and the tenants and therefore the washing machine was not in the exclusive control of the tenants. I find the landlord submitted insufficient evidence that the actions or negligence of the tenants cause damage to the washing machine and I therefore dismiss her claim for \$280.00, without leave to reapply.

Cleaning the rental unit and missing items- I find the landlord failed to comply with the Act by offering the tenants any opportunity at the beginning or at the end of the tenancy to complete a condition inspection report.

Sections 24 and 36 of the Act extinguish the right of the landlord to claim against the deposit for damages should the landlord fail to offer the opportunities for inspection.

In the absence of a condition inspection report or other independent evidence depicting the state of the rental unit both before and after this tenancy, I find there to be insufficient evidence to meet the burden of proof establishing that the tenants damaged or left the rental unit in an unclean state or removed any items from the rental unit. A condition inspection could easily reveal such condition and contents of the rental unit.

Additionally the landlord failed to submit proof that she had suffered a loss for these claimed amounts, which is the first step of her burden of proof.

I therefore dismiss the landlord's claim for \$400.00 for cleaning and missing items, without leave to reapply.

Internet bill-The tenants agreed owing this bill to the landlord and I therefore find that she has established a monetary claim in the amount of \$40.26.

Bank penalty-I find the landlord submitted insufficient evidence of incurring a loss for a bank penalty and I therefore dismiss her claim for \$30.00.

Due to the above, I find the landlord has established a total monetary claim of \$1340.26, comprised of unpaid rent of \$1300.00 for April and the internet bill of \$40.26.

Conclusion

I have offset the tenants' monetary award of \$2650.00 by the landlord's monetary award of \$1340.26 and I therefore grant the tenants a monetary order in the amount of \$1309.74 pursuant to section 67 of the Act.

The monetary order for \$1309.74 is enclosed with the tenants' Decision. This order is a legally binding, final order, and it may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement should the landlord fail to comply with this monetary order.

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: October 10, 2012.

Residential Tenancy Branch