



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking authority to retain the tenant's security deposit and for recovery of the filing fee.

The hearing was originally convened on February 21, 2013, and adjourned due to administrative difficulties involving correct access codes being given to the parties.

No evidence was taken at the original hearing in the absence of the landlord.

At the reconvened hearing, the parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and no party raised any issue regarding service of the evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

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

Background and Evidence

I was provided undisputed evidence that the tenant lived in another rental unit in the landlord's residential property; however the tenant began the tenancy in the rental unit in question between May 25 and June 1, 2012, monthly rent was \$975.00, and the landlord is holding a security deposit from the tenant in the amount of \$440.00.

The parties agree that the tenancy ended on October 17, 2012.

The landlord has requested a monetary order in the amount of \$440.00. When questioned as to why she was asking this amount, the landlord replied that the tenant failed to give notice that she was moving out.

I questioned the landlord further, and she said that the tenant did not pay rent for October 2012. When the tenant responded that she had paid rent and produced the cheque number, the landlord said that it was September for which the tenant did not pay rent.

The tenant again responded that the rent for October was paid, and again produced the cheque number.

The landlord then said it was November 2012 for which the tenant did not pay rent. The tenant agreed that she did not pay rent for November 2012 as she no longer lived in the rental unit.

The landlord did not explain further why she was asking to keep the security deposit of \$440.00.

I then questioned the landlord as to the extent of her advertising the rental unit for re-rent for November 2012, and she replied that she "would have" started advertising after the tenant left, but was not sure of the date or the contents of the advertisement as another individual handled the placement of the ads.

The landlord's relevant evidence included a tenancy agreement, a move-in condition inspection report for another rental unit, and a Decision from a previous dispute resolution hearing.

In response, the tenant said she was compelled to move as the landlord refused to provide heat for the rental unit, did not clean up the garbage in the common area, and did not provide necessary repairs.

Analysis

Based on the relevant oral and written 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, the landlord in this case, has to prove, with a balance of probabilities, 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**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

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

I find the landlord submitted insufficient evidence to support her application. In reaching this conclusion, I considered that the landlord provided contradictory and confusing testimony, at first saying that the tenant did not pay rent for October, then changed her statement to allege that the September rent was not paid, and then again changed her story to say that the November rent had not been paid, all after being confronted with the tenant's evidence. I therefore found I could not rely on the landlord's evidence.

The landlord's application for dispute resolution also did not provide sufficient particulars of her claim for compensation, as is required by section 59(2)(b) of the *Act*. The landlord's sole basis for claiming \$440.00 was due to her allegation that the tenant did not give sufficient notice of her vacating the rental unit. I do not find that to be a sufficient reason to meet her burden of proof.

Lastly, I find the landlord failed to submit proof that she advertised the rental unit or that she took steps to mitigate her loss by reducing the monthly rent requested.

In the absence of proof by the landlord of advertisements, I find that the landlord submitted insufficient evidence to prove step 4 in the test for damage and loss. With the lack of evidence, I cannot determine that the landlord made reasonable attempts to minimize her loss.

Due to the above, I find the landlord failed to provide sufficient evidence to support her application and I therefore dismiss her application in its entirety, including her request to recover the filing fee, without leave to reapply.

As I have dismissed the landlord's application claiming against the tenant's security deposit, I find the tenant is entitled to a return of her security deposit of \$440.00.

Conclusion

The landlord's application is dismissed, without leave to reapply.

The tenant is entitled to a return of her security deposit.

I therefore grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act in the amount of \$440.00, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. Costs of enforcement may be recoverable from the landlord.

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* and is being mailed to both the applicant and the respondent.

Dated: April 02, 2013

Residential Tenancy Branch