Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes   MNSD, MNR, MND, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss, unpaid rent, and damage to the rental unit, for authority to retain the tenant's security deposit and for recovery of the filing fee.

The landlord appeared; the tenant did not appear.

The landlord testified that they served the tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on February 12, 2013. The landlord supplied testimony of the tracking number of the registered mail, as well as stating that they have evidence the tenant signed for the registered mail and that the tenant called the landlord's agent after receiving the hearing package.

I find the tenant was served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenant's absence.

The landlord was 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 oral and written evidence 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, to retain the tenant's security deposit in partial satisfaction of the monetary award, and to recover the filing fee?

Background and Evidence

The undisputed evidence shows that this tenancy began on July 15, 2011, officially ended on January 31, 2013, monthly rent was $775, and the tenant paid a security deposit of $400 at the beginning of the tenancy. I note that the landlord's application referred to a security deposit of $387.50; however, the landlords agreed that the security deposit listed in the tenancy agreement, $400, was the correct amount.

The landlord's relevant evidence included the tenancy agreement, email communication from the tenant stating that he was ending the tenancy effective January 31, 2013, and a condition inspection report.

The landlord testified that the tenant failed to pay rent owed in January 2013, although he did not end the tenancy until the end of January.

The landlord explained that their monetary claim of $850 for the January rent included small amounts still owed by the tenant for other months.

The landlord also submitted that after the tenancy ended, the rental unit required cleaning as the tenant failed to properly clean the rental unit. The landlord's monetary claim for this cleaning was $108.

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.

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

In the case before me, the undisputed evidence of the landlord shows that the tenant remained in legal possession of the rental unit through January 2013, and failed to pay the rent owed for January 2013.

I accept the landlord's undisputed evidence that the tenant also owed other amounts of rent prior to January 2013, and I therefore find the landlord has established a monetary claim for unpaid rent in the amount of $850.

I find the landlord provided sufficient undisputed evidence that the tenant failed to leave the rental unit reasonably clean as required by section 37 of the Act, and I therefore find that the landlord has established a monetary claim in the amount of $108, for cleaning.

I also allow the landlord recovery of the filing fee of $50.00.

I find the landlord is entitled to a monetary award of $1008, comprised of unpaid rent for January 2013 and a small deficiency for other months in the amount of $850, cleaning for $108, and recovery of the filing fee of $50.

At the landlord's request, I allow the landlord to retain the tenant's security deposit of $400 in partial satisfaction of their monetary claim and I grant the landlord a final, legally binding monetary order in the amount of $608 for the balance due, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord's application is granted, they have been given a monetary award in the amount of $1008, they will retain the security deposit of $400, and are granted a monetary order in the amount of $608.

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: May 06, 2013

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Residential Tenancy Branch