



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for cause pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that she received the landlord's October 15, 2013 1 Month Notice to End Tenancy for Cause during the last week of October 2013. The tenant confirmed that she received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on November 19, 2013. I am satisfied that the landlord served the above documents to the tenant in accordance with the *Act*.

At the commencement of the hearing, the parties confirmed that this tenancy ended on November 1, 2013. As such and as the landlord obtained possession of the rental unit that day, the landlord withdrew her application for an Order of Possession, which was submitted in error. The landlord's application for an Order of Possession is withdrawn.

Although the Details of the Dispute in the landlord's application for dispute resolution referenced the tenant's request to have her security deposit returned to her, neither party actually applied to obtain or retain that deposit. Both parties clearly believed that the hearing was to consider whether or not the landlord was entitled to a monetary claim for damage and unpaid rent to be applied towards the tenant's security deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I have considered the

claim submitted by the landlord as an attempt to retain the security deposit in partial satisfaction of the landlord's claim for damage and unpaid rent.

The landlord testified that she sent copies of her photographic and written evidence to both the Residential Tenancy Branch (the RTB) and the tenant in November 2013, when she first commenced her application for dispute resolution. The RTB's only record of written evidence is a one-page proof of service document faxed to the RTB by the landlord on November 19, 2013. The tenant testified that she received some photographs of the condition of the rental unit from the landlord with her dispute resolution hearing package, but no receipts or other documents, other than those relating to the notice of hearing. The landlord testified that she sent a second series of her photographic and written evidence to the RTB on the day before this hearing. After the hearing, I checked with RTB records and discovered that there had been an apparent attempt by the landlord to fax information to the RTB the day before this hearing, the landlord's fax was not successfully transmitted by the landlord.

At the hearing, I advised the parties that as the tenant had not received the landlord's written evidence, I could not consider that evidence the landlord claimed was provided to both the RTB and the tenant. Although the recent provision of photographic evidence by fax had not yet been provided to me, I agreed to review the photographic evidence as the tenant confirmed that she had received these photos.

On the day following this hearing, the landlord attended the Burnaby Office of the RTB and submitted 25 pages of evidence, including 14 pages of photographs (i.e., one per page). I have reviewed and taken into consideration the landlord's 14 photographs. I have not considered the landlord's very late written evidence, as I am not satisfied that the landlord has adequately demonstrated that she provided these documents to the tenant.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy commenced on September 26, 2013, when the tenant moved into this rental unit. Although the *Act* requires a landlord to create a written Residential Tenancy Agreement, no such Agreement was drafted by the landlord. According to the terms of the parties' oral agreement, the landlord first stated that monthly rent was set at

\$600.00. After the tenant stated that the monthly rent was set at \$750.00, the landlord agreed that \$750.00 was the correct amount of monthly rent. The parties agreed that the landlord continues to hold the tenant's \$300.00 security deposit paid on September 6, 2013.

The landlord testified that she conducted three inspections with the tenant before this tenancy began and that the last of these inspections was shortly before the tenant took possession of the rental unit. The tenant claimed that no joint move-in condition inspection occurred because the landlord was out of the country when the tenant moved into the rental unit. The landlord testified that she did not prepare a report of the joint move-in condition inspection.

The landlord's 1 Month Notice identified November 30, 2013, as the effective date for this tenancy to end. The tenant said that the landlord told her that there would be no problem created by the tenant moving out earlier than November 30, 2013, as the landlord wanted her to leave as soon as possible. The tenant testified that the landlord saw her preparing to move and made no effort to contact her to arrange a joint move-out condition inspection. The landlord testified that she did not know the tenant was planning to move out by November 1, 2013, until she found a note on her door and the key to the rental unit inside the tenant's rental unit. Both parties agreed that the tenant did not pay any rent for November 2013. The tenant confirmed that she did not obtain a written mutual agreement to end the tenancy early signed by the landlord.

The landlord testified that the tenant left the premises in such poor condition that the landlord is reluctant to rent this unit out to anyone again. She said that there was extensive damage in the short time that the tenant resided in this rental unit.

The tenant testified that she had to clean the rental unit when she moved in and maintained that the premises were left in good condition at the end of her tenancy. She testified that the rental unit was left "spotless."

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, the only legal notice to end this tenancy given by either party was the landlord's written 1 Month Notice to End Tenancy for Cause, which called for the end to this tenancy by November 30, 2013. Section 52 of the *Act* requires that a tenant provide this notice in writing. Although the tenant

maintained that the landlord had given her oral consent to let her end this tenancy before November 30, 2013, the *Act* requires that any mutual end to tenancy also be in writing, signed by both parties. Under these circumstances, in order to avoid any responsibility for rent for November 2013, the tenant would have needed to provide her notice to end this tenancy before October 1, 2013.

As this did not occur and the only legal notice to end tenancy issued by either party did not take effect until November 30, 2013, I find that the tenant did not comply with the provisions of section 45(1) of the *Act* and the requirement under section 52 of the *Act* that a notice to end tenancy must be in writing.

There is undisputed evidence that the tenant did not pay any rent for November 2013. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. In this case, the landlord testified that the premises were in such poor condition at the end of this short tenancy and she was so traumatized by this experience that she has chosen to not rent the premises to another tenant.

While the landlord claimed that the premises were so damaged that she could not rent it to anyone else, the tenant testified that the rental unit was left spotless and undamaged. This conflicting testimony affects both the landlord's claim for damage and her explanation as to why she has been unable to mitigate the loss of rent for the month of November 2013. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. Section 24(2) of the *Act* reads in part as follows:

Consequences for tenant and landlord if report requirements not met

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [2 opportunities for inspection],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

There is conflicting evidence as to whether any joint move-in condition inspection occurred and the landlord confirmed that she did not complete a move-in condition report. Responsibility for completing this report rests with the landlord. Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move-in condition inspection report and there is no evidence that the landlord produced an inspection report of her own when she took possession of this rental unit at the end of this tenancy, I find that the landlord's eligibility to claim against the security deposit for damage arising out of the tenancy is limited. While the landlord did submit some photographic evidence, the absence of a joint move-in condition inspection report makes it difficult to accurately determine the extent to which the conditions reflected in the photographs varied from the conditions only a month earlier when this tenancy began.

Based on the sworn testimony and, in particular, the landlord's photographic evidence, I find on a balance of probabilities that the tenant did not comply with the requirement under section 37(2)(a) of the *Act* to leave the rental unit "reasonably clean and undamaged" as some cleaning and repair was likely required by the landlord after the tenant vacated the rental unit. For that reason, I find that the landlord is entitled to a somewhat nominal monetary award of \$100.00 for general cleaning and repairs that were required at the end of this tenancy.

There remains the question of whether the condition of the premises at the end of this tenancy and the tenant's precipitous decision to vacate the rental unit truly left the landlord with a legitimate opportunity to re-rent the premises for November 2013. Under these circumstances, I find that the tenant's hasty departure left the landlord with little real chance to mitigate losses for the first half of November 2013. However, by mid-November 2013, I find that the landlord could have been successful in finding another tenant had she chosen to prepare the rental unit for rental and advertised for a prospective tenant. I thus find that the landlord has only partially met her duty to mitigate her losses and discharge her duty under section 7(2) of the *Act* to minimize the tenant's responsibility for the landlord's loss of rent for November 2013. For these

reasons, I find that the landlord is entitled to a monetary award of \$375.00 for her loss of rent for the first half of November 2013. I dismiss the landlord's claim for unpaid rent for the last half of November 2013, as I find that the landlord has not taken adequate measures to mitigate her losses pursuant to section 7(2) of the *Act* for the last half of November 2013.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary award in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, a monetary award for damage and to recover her filing fee, and to retain the security deposit:

Item	Amount
Loss of Rent -First Half of November 2013	\$375.00
Cleaning and Damage	100.00
Less Security Deposit	-300.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$225.00

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: March 10, 2014

Residential Tenancy Branch

