



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, MNR, MND, FF

Introduction

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

This hearing began on August 13, 2014, and dealt only with the tenant's request for an adjournment as she had not received the landlord's digital evidence until shortly before the hearing. At the reconvened hearing on October 21, 2014, the tenant submitted that her evidence was served to the landlord by delivering the documents to the landlord's spouse; the landlord denied receiving the tenant's evidence. The hearing was then adjourned again to allow the tenant to serve/re-serve her evidence to the landlord by registered mail, at my direction.

At this final hearing, the landlord confirmed receiving the tenant's evidence and therefore no further issues remained regarding service of each other's evidence.

This hearing proceeded on the landlord's application for dispute resolution, with the parties being provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution 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 retain the tenant's security deposit, further monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence was that this one year, fixed term tenancy began on September 15, 2013, ended on March 31, 2014, when the tenant vacated the rental unit, monthly rent was \$2300, and the tenant paid a security deposit of \$1100 at the beginning of the tenancy, which the landlord has retained.

The landlord's monetary claim was comprised of a loss of rent revenue of \$2300, repairs to damaged walls of \$254.10, and for replacement of a damaged cedar tree for \$369.60 and for labour for the tree replacement for \$425.

The landlord confirmed there were no condition inspection reports, either for the move-in or the move-out.

In support of his application, the landlord submitted as follows:

Loss of rent revenue for April 2014-

The landlord submitted the tenant ended the tenancy prior to the end of the fixed term, or September 15, 2014, and that although he was successful in finding a new tenant, the new tenancy did not start until May 2014. As a result, according to the landlord, he incurred a loss of rent revenue for April 2014.

The landlord submitted further that he received notice from the tenant in March 2014, that she was vacating the rental unit at the end of March 2014, and began advertising immediately.

Repairs to damaged walls-

The landlord submitted that the tenant was responsible for repair to screw holes in the walls, and that she had made an attempt to put putty over them, but then did nothing else. The landlord submitted further that there was a hole in a wall behind a door, for which the tenant was responsible.

The landlord provided an invoice for the amount he claimed.

Costs incurred for a damage cedar tree-

The landlord submitted that the tenant pruned and trimmed a 30 year cedar tree in the front yard of the rental unit, and that an arborist determined that the damage was too extensive to save the tree. The landlord submitted further that the closest replacement tree cost \$369.60, as shown by a quotation submitted into evidence, and that labour for removing the damaged tree and replacing it with the new tree was \$425, as shown by the quote entered into evidence.

The landlord's further relevant documentary evidence included, but was not limited to, a CD with pictures of the claimed damage, including the walls and cedar tree.

In response to the landlord's application, the tenant submitted as follows:

Loss of rent revenue for April 2014-

The tenant submitted that she had been in contact with the landlord's agent about vacating the rental unit, as her roommate had moved, and that the agent stated the early termination would not be an issue. The tenant submitted further that she provided a written notice on February 28, 2014, that she was vacating the rental unit at the end of March. The tenant confirmed that she had been out of town a large part of March and did not answer a lot of emails.

Repairs to damaged walls-

The tenant submitted that the holes in the wall were three small holes, 1/8" in diameter, 24" apart, from a coat rack she installed and removed at the end of the tenancy. The tenant submitted further that she filled in the holes and was not given any paint by the landlord to finish the project. Additionally, the tenant submitted her moving company loosened the railing, which was repaired by the moving company, and was made more secure as the company attached the railing to a stud rather than the drywall to which it was attached.

As to the hole in the wall, the tenant submitted that this was not noticed in the final walk-through with the landlord's agent, and that the hole was from a door knob as there was no door stop.

Costs incurred for a damage cedar tree-

The tenant submitted that the cedar tree was a hazard at the driveway entrance, that she could not drive her vehicle into the driveway, and that she was assured the tree would grow back after a pruning.

In response to my question, the tenant confirmed that she had not spoken to the landlord about any issue with or plans for the cedar tree.

Landlord's witness-

The landlord's witness submitted that he did not receive the tenant's written notice, and that they never knew of a confirmed date when the tenant would leave, as she failed to return his email requests for a firm date she was leaving.

Analysis

Loss of rent revenue for April 2014-

Section 45(2) of the Act states that a tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the last rent payment is due and that is not earlier than the end of the fixed term.

In the case before me, the tenant was responsible to pay monthly rent until the end of the fixed term, or September 15, 2014 here, subject to the landlord's requirement that he take reasonable measures to minimize his loss, as required by section 7(2) of the Act.

I accept that the tenant provided insufficient notice that she was ending the tenancy earlier than the end of the fixed term, as she vacated the rental unit by March 31, 2014. I also find the landlord submitted sufficient evidence that he took reasonable steps to minimize his loss as he had secured another tenant by May 2014.

I therefore find the landlord submitted sufficient evidence that due to the tenant's breach of the tenancy agreement, the landlord is entitled to recover his loss of rent revenue for April 2014, in the amount of \$2300.

Repairs to damaged walls-

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear. The tenant is therefore not responsible to leave the rental unit in the same state of cleanliness or condition as when the tenancy began.

In reviewing the photographic evidence of the landlord, I am not convinced the claimed damage was beyond reasonable wear and tear. A tenant is entitled to hang items from walls in a rental unit, unless specifically prohibited by the tenancy agreement, which was not the case here, and I do not find that the small holes were excessive. Additionally, I find a reasonable response from the landlord to prevent such damage as the hole in the wall would be to install door stops to the doors in the rental unit.

I therefore dismiss the landlord's claim for damage to the walls in the amount of \$254.10.

Costs incurred for a damage cedar tree-

I find the landlord's photographic evidence and documentary evidence of the state of the cedar tree to be compelling and persuasive and it substantiates that the tenant damaged the cedar tree beyond repair.

I therefore approve the landlord's claim for a replacement of the cedar tree for \$369.60 and for labour for the tree replacement for \$425, as I find the costs to be reasonable.

I find the landlord is entitled to recovery of a partial filing fee of \$50. I have not awarded the landlord recovery of his full filing fee of \$100, as the landlord's initial claim for loss of rent revenue to the end of the fixed term was premature at the time the application was made and had that not been the case, the filing fee would be \$50.

Due to the above, I find the landlord is entitled to a total monetary award of \$3144.60, comprised of the loss of rent revenue for April 2014, in the amount of \$2300, replacement of the cedar tree for \$369.60 and for labour for the tree replacement for \$425, and a partial filing fee of \$50.

Conclusion

The landlords' application for monetary compensation is granted in part.

At the landlord's request, I direct him to retain the tenant's security deposit of \$1100 in partial satisfaction of his monetary award of \$3144.60 and I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$2044.60, 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.

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: December 11, 2014

Residential Tenancy Branch

