



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, (MND), MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a monetary order for loss of rental income, compensation for damages to the rental unit as well as to recover the filing fee for this proceeding. The Landlord also applied to keep the Tenant's security deposit.

At the beginning of the hearing both Parties claimed that they did not serve the other party with a copy of their respective evidence packages. As a result, the hearing proceeded with reference only to the Parties' oral evidence.

Issues(s) to be Decided

1. Is the Landlord entitled to compensation for loss of rental income or damages to the rental unit and if so, how much?
2. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This month to month tenancy started on May 1, 2008 and ended on March 31, 2009. Rent was \$625.00 per month. The Tenant paid a security deposit of \$312.00 at the beginning of the tenancy. The Tenant gave the Landlord a written notice dated March 2, 2009 that he was ending the tenancy effective March 31, 2009.

The Landlord said she advertised the rental unit for rent immediately on an online website, Castanet, for approximately \$700.00 per month but she did not get any responses so 2 weeks later she reduced the asking amount to \$650.00 or \$675.00 per month. The Landlord said she had one prospective tenant who was going to view the property but they never showed up. The Landlord said she was unable to re-rent the rental unit for April or May, 2009. The Landlord said she told the Tenant she had a "potential tenant" for April, 2009 so that he would return his keys.

The Landlord also claimed that the Tenant left the rental unit unclean at the end of the tenancy. In particular, the Landlord claimed that the Tenant left some garbage behind including an old frying pan and did not clean the refrigerator, bathroom or carpets. The Landlord said it took her 4 hours to clean the unit and carpets and to dispose of

garbage. Consequently, the Landlord claimed \$80.00 for cleaning, \$35.00 to rent a carpet cleaner and \$10.00 for landfill fees. The Landlord said she did not do a condition inspection report at the beginning or end of the tenancy. The Landlord also said she took pictures of the rental unit at the end of the tenancy but did not provide them as evidence at the hearing.

The Tenant admitted that he gave late notice to the Landlord but claimed that the Landlord sent him a text message in early April advising him that a new tenant had moved into the rental unit and that she would be returning his security deposit. The Tenant said the Landlord asked him for his forwarding address and asked him to return his key and mail key for the new Tenant. The Tenant said he gave the Landlord his forwarding address and keys on April 4, 2009. The Tenant said had he known the unit was not re-rented he would have continued to use it for April, 2009.

The Tenant admitted that he left a couple of bags of garbage behind in the rental unit but claimed that he told the Landlord she could keep \$100.00 of the security deposit for any cleaning that needed to be done. The Tenant argued that the carpets were not cleaned at the beginning of the tenancy.

Analysis

Section 45(1) of the Act says that a Tenant of a periodic (or month to month) tenancy must give the Landlord one clear month's written notice that they are ending the tenancy. If a tenant fails to do this, they may be liable for a loss of rental income that the Landlord suffers up the earliest date that the notice could have taken effect. In this case, the earliest the Tenant's notice could have taken effect would have been April 30, 2009.

However, section 7(2) of the Act says that a Party who suffers damage must do whatever is reasonable to minimize their losses. This means that a Landlord who suffers damages must take reasonable steps to re-rent a rental unit as soon as possible. In this case, I find that the Landlord did not take reasonable steps because she tried to rent the unit for a considerably higher rate of rent even though she was getting no response to her advertisements at that asking rate. Furthermore, I find that the Landlord did tell the Tenant that she had re-rented the rental unit for April so that he would return the keys and not be able to use of it for that period of time, and for that reason also, I find the Landlord is not entitled to a loss of rental income for April, 2009.

In the absence of a condition inspection report, photographs, receipts or any other corroborating evidence, I find that there is insufficient evidence to support the Landlord's claim for cleaning expenses. However, the Tenant did admit that he left some garbage



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behind and that some cleaning was necessary. Consequently, I award the Landlord \$100.00 for cleaning expenses.

Section 25 and 36 of the Act say that if a Landlord does not do a condition inspection report at the beginning of the tenancy or at the end of the tenancy, their right to make a claim against the security deposit is extinguished. In this case, I find that the Tenant agreed to the Landlord deducting \$100.00 from the security deposit and therefore pursuant to s. 62(3), I order the Landlord to keep \$100.00 from the security deposit and to return the balance of it plus accrued interest to the Tenant as follows:

Security deposit:	\$312.00
Accrued interest:	<u>\$3.13</u>
Subtotal:	\$315.13
Less: Cleaning expense:	<u>\$100.00</u>
Balance owing:	\$215.13

The Landlord's application to recover the filing fee for this proceeding is dismissed.

Conclusion

A monetary order in the amount of **\$215.13** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia.

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: May 28, 2009.

Dispute Resolution Officer