



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlords for a monetary order for loss of rental income, for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding. The Landlords also applied to keep the Tenants' security deposit.

The Landlords served the Tenants with a copy of the Application and Notice of Hearing by registered mail on May 27, 2009 to a forwarding address provided by the Tenants. According to the Canada Post online tracking system, a notification card was left for the Tenants on May 28, 2009, however they did not pick up the hearing packages. The Landlords claim that the forwarding address provided by the Tenants was the work place of one of them. In the circumstances, I find that the Tenants were sufficiently served for the purposes of the Act and the hearing proceeded in their absence.

Issues(s) to be Decided

1. Are the Landlords entitled to a loss of rental income and if so, how much?
2. Are the Landlords entitled to compensation for damages and if so, how much?
3. Are the Landlords entitled to keep the Tenants' security deposit?

Background and Evidence

This fixed term tenancy started on October 1, 2008 and was to expire on September 30, 2009 but ended on May 5, 2009 when the Tenants advised the Landlords they had moved out. Rent was \$2,000.00 per month. The Tenants paid a security deposit and pet damage deposit of \$1,000.00 each on September 1, 2008.

The Landlords claim that the Tenants put a stop payment on their May 2009 rent cheque and that rent for that month is still unpaid. The Landlords said they were unable to re-rent the unit until June 1, 2009. The Landlords also said they incurred expenses of \$301.90 to advertise the rental unit as well as \$34.09 for general cleaning, \$103.95 for carpet cleaning \$56.46 to replace a window screen, \$6.00 to replace a light bulb and \$60.00 to remove oil stains from the drive way. The Landlords sought to recover \$50.00

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for bank charges as they claim the Tenants' rent cheque for April 2009 was returned for non-sufficient funds. They also sought to recover \$500.00 for damages to a hardwood floor. The Landlords said there were a number of little dents in the dining room floor. One estimate they received was for \$200.00 plus the cost of a box of boards. The Landlords said they had another person inspect the floor who thought it might cost \$1,500.00 to repair however he did not want to do the job and refused to provide an estimate.

The Landlords said they asked the Tenants a number of times to participate in a move out condition inspection however the Tenants would not contact them. The Landlords sent the Tenants a Final Opportunity to Schedule a Condition Inspection for May 20, 2009 however, the Tenants did not attend. In support of their claim, the Landlords provided a copy of a Move out Condition Inspection Report they completed without the Tenants which is dated May 11, 2009.

Analysis

Section 45(2) of the Act says that a tenant may not end a fixed term tenancy any earlier than the day indicated in the tenancy agreement as the last day of the tenancy. If a Tenant ends a fixed term tenancy earlier, they may be liable to compensate a Landlord for a loss of rental income he incurs as a result. I find that the Tenants ended the tenancy early without notice and as a result, they are liable for May 2009 rent in the amount of \$2,000.00.

In the absence of any bank records I find that there is insufficient evidence that the Landlords incurred bank charges of \$50.00 for the Tenants' NSF cheque for April, and that part of their claim is dismissed. Based on the invoices and condition inspection report, I find that the Landlords are entitled to recover \$34.09 for general cleaning, \$103.95 for carpet cleaning, \$56.46 to replace a window screen, \$6.00 to replace a light bulb and \$60.00 to remove oil stains from the drive way.

I find that the Landlords acted reasonably in advertising the rental unit to mitigate their losses, however, they would likely have incurred some advertising expenses even if the Tenants had given them proper notice. Consequently, I award the Landlords approximately one-half of their advertising expenses or \$150.00.

Section 32 of the Act says that a Tenant is responsible for damages caused by their actions or neglect but is not responsible for reasonable wear and tear. RTB Policy Guideline #1 defines wear and tear as "natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion." The Landlords did not provide any photographs of the damaged section of the flooring and as a result, there is insufficient evidence to conclude that it was caused by

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an act or neglect of the Tenants rather than reasonable wear and tear. Consequently, this part of the Landlords' application is dismissed. In summary, the Landlords are entitled to recover the following amounts:

May 2009 rent:	\$2,000.00
General cleaning:	\$34.09
Carpet cleaning:	\$103.95
Window Screen:	\$56.46
Oil stain removal:	\$60.00
Light Bulb:	\$6.00
Advertising:	<u>\$150.00</u>
Subtotal:	\$2,410.50

As the Landlords have been successful in this matter, they are also entitled to recover their \$100.00 filing fee for this proceeding. I order the Landlords to keep the Tenants' security deposit plus accrued interest in partial payment of the damage award. The Landlords will receive a monetary order for the balance owing as follows:

Damages:	\$2,410.50
Filing fee:	<u>\$100.00</u>
Subtotal:	\$2,510.50
Less: Security deposit:	(\$1,000.00)
Pet deposit:	(\$1,000.00)
Accrued interest:	<u>(\$10.00)</u>
Balance owing:	\$500.50

Conclusion

A monetary order in the amount of **\$500.50** has been issued to the Landlords and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order 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: July 03, 2009.

Dispute Resolution Officer