



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MND, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for damage to the rental unit, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions to me.

Neither party raised any preliminary administrative issues or concerns.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for advertising costs that relate to an early end to this tenancy; to costs for cleaning the rental unit; to retain all or part of the security deposit; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on November 01, 2006; that it ended on April 30, 2009; that the Tenant was required to pay monthly rent of \$975.00 on the first day of each month; and that the Tenant paid a security deposit of \$437.50 on November 01, 2006.

The Landlord and the Tenant agree that the Tenant did not provide the Landlord with one month's notice of his intent to vacate the rental unit at the end of April of 2009, although they agree that it was provided sometime during the first week of April. The parties agree that this tenancy did end on April 30, 2009.

The Landlord is claiming compensation, in the amount of \$127.06, for advertising costs incurred. The Landlord declared that it advertised the rental unit on three separate occasions. The Landlord contends that it had to run the advertisement two times more than would have been required if appropriate notice had been given and it is seeking compensation for the cost of the two additional advertisements. The female Landlord stated that they have previously been able to find a tenant after placing one advertisement for the rental unit and she speculated that they had to advertise additional times on this occasion because they were unable to place the advertisement during the first week of April. She stated that they did find a new tenant on May 01, 2009; that the new tenant was allowed to move some personal property into the rental unit on May 01, 2009; and that the new tenancy officially began on May 02, 2009. The Landlord submitted copies of receipts for the two additional advertisements.

The Landlord is claiming compensation, in the amount of \$127.50, for cleaning the rental unit. The Landlord submitted a copy of a receipt, dated May 04, 2009, which indicates the Landlords paid this amount to have the rental unit cleaned.

Both Landlords stated that the rental unit was very dirty at the end of the tenancy. The female Landlord stated that the Landlords spent approximately six hours cleaning the rental unit and then hired a cleaner to complete the cleaning.

The Landlord's witness, testified that she viewed the rental unit and observed that it was dirty and required additional cleaning. She is not certain of the exact date that she viewed the rental unit. She does know that she viewed it before the Tenant borrowed a steam cleaner from her for the purposes of cleaning the rental unit.

The Tenant stated that he returned to the rental unit on several occasions between April 26, 2009 and April 30, 2009, at which time he removed his property and cleaned the rental unit.

The Tenant's witness #1, who is his father, stated that he viewed the rental unit on April 30, 2009, in the presence of his son and the male Landlord. He stated that he believed the rental unit was clean at that time; that the male Landlord made no complaints about the state of the rental unit; and that his son and the male Landlord argued about the timing of the Tenant's notice to end the tenancy.

The Tenant's witness #2, stated that was in the rental unit with the Tenant on the day before the Tenant returned the keys to the rental unit, at which time he observed the Tenant cleaning the rental unit. Although he acknowledged that he did not look inside cupboards, inside the oven, or behind the stove, he stated that he believed the rental unit was clean.

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The male Landlord declared that a condition inspection report was completed at the beginning of this tenancy, although it was not signed by the Tenant. The Tenant declared that a condition inspection report was not completed in his presence at the beginning of the tenancy.

The male Landlord stated that he met with the Tenant at the rental unit on April 30, 2009, for the purposes of completing a condition inspection report. He stated that a report was not completed because the parties argued about the late notice that was provided by the Tenant and the Tenant left without completing the report. The Tenant agreed that he met with the April 30, 2009, at which time he alleges the Landlord declared the rental unit was in good condition.

The Landlord submitted several photographs of the rental unit, which the female Landlord declared were taken on May 01, 2009. These photos clearly show that the rental unit was in need of cleaning.

The Tenant argued that the photographs were taken prior to May 01, 2009 and that he cleaned the rental unit after these photographs were taken. He referred to a photograph of the stove in which there is a reflection of a pile of boxes and other items in the middle of the floor. He stated that these are his personal items and that the reflection demonstrates that the photographs were taken prior to the end of his tenancy.

The female Landlord stated that the items in the reflection were personal items belonging to the new tenant, who was allowed to move some items into the rental unit on May 01, 2009, although their tenancy did not start until May 02, 2009.

Analysis

I find that the Tenant failed to comply with section 45 of the *Act* when he failed to provide the Landlord with written notice of his intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due.

Section 67 authorizes me to order a tenant to compensate the landlord if the landlord suffers a loss as a result of the tenant not complying with the *Act*. In these circumstances, I am not satisfied that the advertising costs incurred were the result of the late notice to vacate that was provided by the Tenant. I find that the Landlord would have incurred advertising costs even if the Tenant had provided a full month's notice of his intent to vacate the rental unit. I further find that it is purely speculative to assume that the Landlord would have been able to secure a new tenant if they had advertised

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during the first week in April. In reaching this conclusion, I was strongly influenced by the fact that many rental units remain vacant for a month or more even when they advertise at the beginning of the month. On this basis, I dismiss the Landlord's claim for compensation for the cost of advertising the rental unit.

After viewing the photographs submitted by the Landlord and hearing the statements of the Landlords, the Tenant, and all three witnesses regarding the cleanliness of the rental unit, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to leave the rental unit in reasonably clean condition at the end of the tenancy.

I favoured the evidence of the Landlord over the evidence of the Tenant in regards to the cleanliness of the rental unit, in part, because of the photographs submitted in evidence. These photographs clearly show that the rental unit required cleaning.

Although the Tenant argued that the photographs were taken prior to the end of his tenancy because a reflection in one of the photographs show his personal items still in the rental unit, I find the Landlord's statement that the personal items reflected in the photograph actually belonged to the new tenant, who moved them into the rental unit on May 01, 2009, to be more credible.

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

In regards to the circumstances before me, I find the personal items reflected in one of the photographs are neatly piled in the middle of the room. It is my experience that this method of storing property is far more common when someone is moving into a rental unit, rather than when someone is moving out of a rental unit, at which time property is generally stored in a more haphazard fashion. As I find that the personal property is more likely to belong to the new tenant, I find that this corroborates the Landlord's declaration that the photographs showing the rental unit required cleaning were taken on May 01, 2009, after this tenancy ended.

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I also favoured the evidence of the Landlord over the evidence of the Tenant in regards to the cleanliness of the rental unit, in part, because of the receipt they submitted that indicates the rental unit was cleaned. I find it highly unlikely that the Landlord would have paid \$127.50 for a cleaner if the rental unit did not actually require cleaning.

I did not find the evidence of any of the witnesses particularly helpful in this regard as their descriptions of the condition of the rental unit was subjective and far less reliable than the photographs of the rental unit.

As the Tenant failed to comply with section 37(2) of the *Act*, I find that he must compensate the Landlord for any damages that flow from his failure to comply with the *Act*, which in these circumstances is \$127.50 for cleaning.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$177.50, which is comprised on \$127.50 for cleaning costs and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Landlord is hereby authorized to retain \$177.50 from the Tenant's security deposit.

The Landlord is obligated to return the remainder of the security deposit, which is \$260.00, plus interest in the amount of \$13.61. Based on these determinations I grant the Tenant a monetary Order for the amount \$273.61. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court 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: August 19, 2009.

Dispute Resolution Officer