



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for compensation for loss of rental income, for damages to the rental unit and to recover the filing fee for this proceeding. The Landlord also applied to keep the Tenants' security deposit.

Issues(s) to be Decided

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

Background and Evidence

This tenancy started on February 1, 2008 and ended on or about March 3, 2009. Rent was \$750.00 per month. The Tenants paid a security deposit of \$375.00 at the beginning of the tenancy. A condition inspection report was not done at the beginning or at the end of the tenancy.

The Landlord said she had to hire an exterminator to treat the rental unit because the Tenants' 6 cats and 1 ferret had caused a flea infestation. The Landlord also said that she had to replace a carpet in one room because it was soiled from pet urine and feces and likely had flea eggs. In support of her claim the Landlord provided a copy of her Mastercard bill showing a payment of \$183.75 to ABC Pest Control on May 23, 2009 but she did not provide a copy of an invoice for that service. The Landlord provided a copy of an invoice dated June 14, 2009 for new carpeting in the amount of \$249.46.

The Landlord also claimed that the Tenants painted two rooms a dark colour without her consent and therefore claimed the cost of materials and labour for repainting those rooms. The Landlord said that the Tenants removed mouldings in those rooms and did not replace them. The Landlord provided an invoice dated June 20, 2009 for paint in the amount of \$45.29.

The Landlord said that the Tenants wedged a baby shampoo bottle in the shower stall drain and that it took her a whole day to remove it. The Landlord also said that the

Tenants left behind a number of belongings and claimed \$200.00 as the cost to dispose of them. The Landlord sought to recover one-half of a month's rent for April 2009 due to the time it took to do repairs and remove the Tenants' belongings.

The Tenants denied that there was a flea infestation but argued that if there was, it was caused by the Landlord's dog who frequently went outside and was allowed to run in their rental unit. The Tenants also denied that their pets damaged carpets in one room and said that they placed linoleum over the carpet at the beginning of the tenancy to protect it. The Tenants claimed that the carpets were dirty at the beginning of the tenancy and although the Landlord promised to have them cleaned, she did not do so.

The Tenants claimed that at the beginning of the tenancy, the walls in the rental unit were dirty, had marks and mould stains and the Landlord had not painted them. Consequently, the Tenants said the Landlord gave them permission to paint and viewed it after it had been painted. The Tenants denied that they removed any mouldings.

The Tenants also denied that they stuffed a bottle of baby shampoo into the drain of the shower. The Tenants admitted that they left a number of belongings behind but claimed that the Landlord left them in the back yard so that they could retrieve them. The Tenants also admitted that their belongings were at the rental property for about 2 months before the Landlord disposed of them.

Analysis

Sections 23 and 35 of the Act require a Landlord to complete a condition inspection report at the beginning and at the end of a tenancy. If a Landlord fails to do so, then pursuant to s. 24 and 36 of the Act, the Landlord's right to make a claim against the security deposit for damages to the rental unit is extinguished. The purpose of having a condition inspection report is to make it easier to determine if the Tenants are responsible damaging the rental unit during the tenancy.

In this case, the Landlord did not do a condition inspection report at the beginning or at the end of the tenancy. Consequently, there is no evidence of the condition of the rental unit at either of those times. The Landlord provided a couple of photographs of the rental unit but I find that they are unreliable because they were taken almost a month after the tenancy ended and as a result, I do not give them much weight.

I find that there is insufficient evidence that the Tenants were responsible for a flea infestation or for damaging a carpet. There was no evidence of the condition of the carpet when the Tenants moved out. Further, the charge for the exterminator was incurred more than 2 months after the tenancy ended and the charge for the carpeting

was incurred more than 3 months after the tenancy ended. Consequently, this part of the Landlord's claim is dismissed.

Similarly, I find that there is insufficient evidence to corroborate the Landlord's allegation that the Tenants stuffed a bottle of baby shampoo into the drain of the shower or that they removed mouldings from 2 rooms and those parts of the Landlord's claim are dismissed.

RTB Policy Guideline #1 (Responsibility for Residential Premises) at p. 4 says that a Landlord is responsible for painting the interior of the rental unit at reasonable intervals. Page 4 of that Guideline says that if a Tenant makes changes to the rental unit without the explicit consent of the Landlord, the rental unit must be returned to its original condition. In this case, I find that the Tenants had the consent of the Landlord to paint the rental unit because the walls were in a dirty and worn condition at the beginning of the tenancy and she did not want to paint them. Consequently, the Landlord's claim for painting expenses is dismissed.

I find that there is evidence that the Landlord reasonably incurred expenses to dispose of articles left behind by the Tenants. Although the Tenants claimed that they intended to return to the rental unit and retrieve them, they failed to do so for 2 months. I find on a balance of probabilities that the cost to safely store those items would have exceeded the market value of the items and as a result, I find that the Landlord was entitled to dispose of them. However, the Landlord did not provide any evidence to support her claim for \$200.00. I find that 4 hours of labour would have been a reasonable amount of time to dispose of the items and based on \$25.00 per hour, I find that the Landlord is entitled to recover \$100.00.

I note that the receipts provided by the Landlord for materials for alleged repairs to the rental unit were incurred 2 – 3 months after the tenancy ended. Further, none of those receipts indicate that the services or materials were for the rental unit in question. I also note that the tenants who occupied the rental unit before these Tenants left personal possessions in the rental unit for 2 months prior to retrieving them. Consequently, I find that there is insufficient evidence to conclude that the Landlord lost rental income for ½ of April 2009 due to the Tenants' failure to remove items from the back yard or due to a need to make repairs and that part of her claim is dismissed.

In summary, the Landlord has made out a claim for \$100.00. As the Landlord has been unsuccessful on most of her claims in this matter, she is not entitled to recover the filing fee for this proceeding. Although the Landlord's right to claim against the security deposit for damages is extinguished under s. 24 and s. 36, I find that sections 38(4), 62 and 72 of the Act when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the



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rights and obligations of the parties. Consequently, I order the Landlord to keep \$100.00 from the Tenants' security deposit and accrued interest and to return the balance of \$280.15 to the Tenants as follows:

Security deposit:	\$375.00
Accrued interest:	<u>\$5.15</u>
Subtotal:	\$380.15
Less: Damage award:	<u>(\$100.00)</u>
Balance owing:	\$280.15

Conclusion

The Landlord's application for compensation for disposing of items belonging to the Tenants is allowed. The balance of the Landlord's application is dismissed. A monetary order in the amount of **\$280.15** has been issued to the Tenants and a copy of the order 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 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 20, 2009.

Dispute Resolution Officer