



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 Landlords for a monetary order for loss of rental income and unpaid rent, for compensation for damages to the rental unit and to recover the filing fee for this proceeding. The Landlords also applied to keep the Tenant's security deposit.

Issues(s) to be Decided

1. Are the Landlords entitled to compensation for loss of rental income and unpaid rent 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 Tenant's security deposit?

Background and Evidence

This month to month tenancy started on August 1, 2006 and ended on May 15, 2009 when the Tenant moved out. Rent was \$680.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$340.00 at the beginning of the tenancy.

The Landlords claimed that on January 5, 2009, the toilet in the Tenant's rental unit overflowed and caused approximately \$20,000.00 in damages to 4 other units in the rental property. As a result, the Landlords said the Strata sought to recover its insurance deductible of \$5,000.00 from them. The Landlord provided a copy of an invoice for plumbing services that stated "cleared the plugged toilet with my toilet auger pulling back sanitary napkins and tampon." The Landlords also sought to recover the cost of that plumbing repair as well as a plumbing repair on January 19, 2009 to fix a toilet handle. The Landlords argued that the toilet was in good working order at the beginning of the tenancy.

The Landlords also claimed that the Tenant moved out without giving them any notice and that his rent cheque for May 2009 was returned for insufficient funds. Consequently, the Landlords claim there are rent arrears of \$680.00 for May 2009. The Tenant claimed that he gave the Landlords verbal notice at the end of April 2009 that he would be moving on May 15, 2009 and told them that they could keep his security deposit in payment of ½ a month of rent.

The Tenant denied that he was responsible for the toilet flooding in his rental unit. The Tenant said he was told by a neighbouring resident in the rental property that the buildings “pipes” had been blown approximately one week prior. The Tenant said he noticed after the pipes had been blown that the shower would shake and the water flow had to be re-adjusted. Consequently, the Tenant said he believed that when the pipes were blown, the obstructions were shoved down the lines from another suite in the rental property. The Tenant claimed that he didn’t have a permanent girlfriend but admitted that he did have women at the rental unit from time to time.

The Tenant said he believed the flooding occurred in February 2009 and not in January. The Tenant also argued that he was advised by the plumber who came to fix the toilet handle that it was faulty.

Analysis

Under section 45 of the Act, a Tenant of a month-to-month tenancy must give one clear months notice that he intends to end the tenancy. Section 52 of the Act says that the notice must be in writing. Consequently, the Tenant’s verbal notice was not effective to end the tenancy and even if the Tenant gave written notice at the end of April, the earliest that notice could have been effective would have been May 31, 2009. As a result, the Landlords are entitled to recover unpaid rent and a loss of rental income for May, 2009 of \$680.00.

Section 32 of the Act says that a Landlord is generally responsible for maintenance and repairs of a rental unit, however a Tenant is responsible for repairing damage if it is caused by the act or neglect of himself or a person permitted on the residential property by the Tenant.

In this case, the Landlords have the onus of proving that the Tenant was responsible for the toilet flooding in the rental unit and for damaging the toilet handle. The Tenant argued that he was not responsible for the toilet flooding and claimed it was likely the result of the water lines in the building being blown approximately one week prior. The Tenant also claimed that the toilet handle was defective. In the absence of any additional evidence from the Landlords to show that the obstructions that caused the flooding originated in the rental unit, I find that there is insufficient evidence to conclude that the Tenant was responsible for it. I also find that there is insufficient evidence to conclude that the Tenant damaged the toilet handle. Consequently, the Landlords’ claim to be compensated for the Strata’s insurance deductible and plumbing expenses is dismissed.



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As the Landlords have been only partially successful in this matter, they are entitled to recover one-half of the filing fee for this proceeding or \$50.00. I order the Landlords pursuant to s. 38(4) of the Act to keep the Tenant's security deposit plus accrued interest in partial payment of the rent arrears. The Landlords will receive a monetary order for the balance owing as follows:

May 2009 rent:	\$680.00
½ of Filing fee:	<u>\$50.00</u>
Subtotal:	\$730.00
Less: Security deposit:	(\$340.00)
Accrued interest:	<u>(\$11.02)</u>
Balance owing:	\$378.98

Conclusion

A monetary order in the amount of **\$378.98** has been issued to the Landlords and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, 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: September 04, 2009.

Dispute Resolution Officer