



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MND, MNDC, MNSD

Introduction

This matter dealt with an application by the Landlord for a monetary order for loss of rental income, for liquidated damages and for cleaning expenses and repairs to the rental unit. 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 and if so, how much?
2. Is the Landlord entitled to liquidated damages?
3. Is the Landlord entitled to compensation for cleaning and repairs and if so, how much?
4. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This fixed term tenancy started on August 1, 2009 and was to expire on July 31, 2009. The Tenants gave the Landlord written notice on May 1, 2009 that they were ending the tenancy on May 31, 2009 and moved out on May 29, 2009. Rent was \$1,185.00 per month. The Tenants paid a security deposit of \$592.50 at the beginning of the tenancy.

The Landlord claimed that the Tenants agreed to pay liquidated damages of \$400.00 if they ended the tenancy early. The Landlord also claimed that she tried to re-rent the rental unit as soon as she received the Tenants' written notice but that the unit could not be re-rented until July 15, 2009 (for \$1,150.00 per month).

The Landlord said that the Tenants were also responsible under the tenancy agreement for professionally cleaning the carpets at the end of the tenancy however they did not do so. The Landlord also said that the Tenants did not clean the rental unit and as a result, she incurred expenses to have it cleaned. The Landlord claimed that the Tenants burned the linoleum floor in the kitchen and damaged the walls with pin and nail holes and also damaged some trim. In support of her claim for cleaning and repairs, the Landlord provided a one page document called "move in – move out form."

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The Landlord claimed that the carpets had been cleaned at the beginning of the tenancy. The Landlord also claimed that some of the walls had scratches and filled nail holes at the beginning of the tenancy and had not been painted since November 2005. The Landlord said that the linoleum was 9 years old.

The Tenants admitted that they agreed to pay liquidated damages if they ended the tenancy early but argued that they were led to believe that they would not be responsible for a loss of rental income. The Tenants also argued that they cleaned the whole rental unit except the trim and electrical box. The Tenants said that they offered to stay do any remedial cleaning identified by the Landlord. The Tenants said they also offered to fill nail holes and paint the walls but the Landlord's building manager told them not to bother because it would have to be painted again anyway. The Tenants denied that they damaged any trim beyond reasonable wear and tear and claimed that some of it in the bathroom had been broken when the flooring had been pulled up by the Landlord.

The Tenants did not take any issue with the Landlord's claim for carpet cleaning and admitted to damaging the flooring in the kitchen. The Tenants argued however, that the invoices provided by the Landlord for the repairs and cleaning were unreliable because they were handwritten and the work was done by the former building managers. The Tenants claimed that they gave their forwarding address to the building managers on May 29, 2009 when they did the move out condition inspection.

Analysis

RTB Policy Guideline #4 – Liquidated Damages states that unless an amount agreed to is “a genuine pre-estimate of loss at the time the agreement is entered into, the clause may be held to constitute a penalty and will be unenforceable.” In this case, the clause of the tenancy agreement that provides for liquidated damages indicates that it is for the payment of administrative costs which the Landlord identified as increased advertising expenses and showings. The clause also indicates that the Landlord may, in addition, pursue the Tenant for a loss of rental income. Consequently, I find that the Tenants are responsible for liquidated damages in the amount of **\$400.00** for ending the tenancy early.

Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that results. Section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of

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rental income. I find that the Landlord took reasonable steps to re-rent the rental unit and is entitled to recover a loss of rental income for June 2009 of **\$1,185.00** and for July 2009 of **\$660.00** (or \$1,185.00 - \$525.00).

Section 20 of the Regulations to the Act sets out standard information that must be included in a Condition Inspection Report. In particular, the report must include a statement of the state of repair and general condition of each room in the rental unit, the floors, window coverings, appliances, fixtures and so forth. The Report must also itemize any damage to the rental unit for which the tenant is responsible. I find that the Landlord's Condition Inspection Report is deficient in a number of respects; it does not indicate the state of repair and general condition of each room in the rental unit and does not itemize the damages for which the tenants are alleged to have been responsible. Instead the Report simply states the cost for repairs and cleaning.

As the Tenants did not dispute the amount claimed for carpet cleaning, I find that the Landlord is entitled to recover **\$131.25**. Given the lack of detail on the condition inspection report and the Tenants' evidence that they cleaned the rental unit, I find that there is insufficient evidence to support the Landlord's claim for general cleaning and that part of her application is dismissed. For similar reasons, I find that there is insufficient evidence to support the Landlord's claim for repairs to the trim and painting. Furthermore, RTB Policy Guideline #1 states at p. 4 that a Landlord is responsible for painting the interior of a rental unit at reasonable intervals. I conclude that painting of the rental unit was likely required as a result of general wear and tear and as a result, these parts of the Landlord's claim are also dismissed.

The Tenants admitted to damaging the linoleum flooring in the kitchen and the Landlord admitted that the flooring was 9 years old. In the circumstances, I find that the Tenants should not be responsible for the entire cost of replacing the flooring which had reached the end of its useful lifetime and as a result, I find that they are responsible for only 10% of the cost of new materials and labour or **\$33.65**.

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date she receives the Tenants' forwarding address in writing (whichever is later) to either return the Tenants' security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenants' written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit to the Tenants.

I find that the Landlords received the Tenant's forwarding address in writing on May 29, 2009 and that the tenancy ended on May 31, 2009. Even if I accept that the tenancy ended on May 29, 2009, I find that the Landlord applied for dispute resolution within the

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time limits under the Act. In particular, the 15th day following May 29th was Saturday, June 13, 2009. Section 25(3) of the Interpretation Act says “if the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.” Consequently, I find that the Landlord had until June 15, 2009 to file for dispute resolution and is not liable to repay double the security deposit to the Tenants.

As the Landlord has been successful in this matter, she is entitled to recover the **\$50.00** filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenants’ security deposit plus accrued interest in partial payment of the damage award. The Landlord will receive a monetary order for the balance owing as follows:

Loss of rental income:	\$1,845.00
Liquidated damages:	\$400.00
Carpet cleaning:	\$131.45
Floor repair:	\$33.65
Filing fee:	<u>\$50.00</u>
Subtotal:	\$2,460.10
Less: Security Deposit:	(\$592.50)
Accrued Interest:	<u>(\$3.72)</u>
Balance Owing:	\$1,863.88

Conclusion

A monetary order in the amount of **\$1,863.88** has been issued to the Landlord 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: September 29, 2009.

Dispute Resolution Officer