



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

Background and Evidence

This month to month tenancy started on July 15, 2007 and ended on or about January 15, 2009. Rent was \$750.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$375.00 at the beginning of the tenancy.

The Landlord claims that the Tenants moved out at some point in January 2009 without any notice to him. The Landlord also claimed that when the Tenants moved out of the rental unit, it was not cleaned and had damages. In particular, the Landlord claimed that it took approximately 8 hours to clean the rental unit and a further 18 hours to re-paint the interior of the rental unit. The Landlord said that the kitchen walls and ceiling were soot stained and the paint used by the Tenants to cover it was not applied properly so it had to be sanded, primed and re-painted. The Landlord also said that the walls in the other rooms were dirty. The Landlord claimed that the rental unit had been freshly painted at the beginning of the tenancy.

As a result of the lack of notice and need to do cleaning and repairs, the Landlord said the rental unit could not be re-rented until March 1, 2009 and as a result, he lost rental income for February 2009.

The Tenants claim that they had ongoing problems with the furnace in the rental unit for about 3 months such that they did not have heat. Consequently, the Tenants say they verbally advised the Landlord in early January 2009 that if the furnace was not fixed within 2 weeks they would move out. The Tenants claim that the Landlord had

someone in to look at the furnace but it had still not been fixed when they moved out on or about January 15, 2009.

The Tenants admitted that they did not clean the rental unit at the end of the tenancy and did not return the keys to the Landlord. The Tenants also admitted that they did not leave a forwarding address for the Landlord when they moved out. However, the Tenants disputed that they should be responsible for the whole cost of carpet cleaning as they claim the hallway carpet was water stained from the furnace leaking. The Tenants also disputed that they should be responsible for re-painting the bedrooms in the rental unit as they claimed they were not in good shape at the beginning of the tenancy.

Analysis

Section 45(1) of the Act says that a Tenant of a month-to-month tenancy must give one clear months notice that they are ending the tenancy. Section 52 of the Act says that the Notice must be in writing. The only exception to this rule is set out in s. 45(3) of the Act which says that if a landlord fails to comply with a material term of the tenancy agreement and does not correct the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy without further notice to the Landlord.

In this case, the Tenants claim that the Landlord was in breach of a material term of the tenancy to make an emergency repair to the furnace, which was their primary source of heat. While this may be true, s. 45(3) of the Act says that the Tenant must give the Landlord written notice of the breach which I find that Tenants did not do. As a result, the Tenants were required to give the Landlord one month's written notice they were ending the tenancy which they also did not do. Consequently, I find that the Landlord is entitled to a loss of rental income for February 2009 of **\$750.00**.

Section 37 of the Act says that at the end of a tenancy, a Tenant must leave the rental unit clean and undamaged except for reasonable wear and tear. The Tenants admitted that they did not clean the rental unit at the end of the tenancy but argued they should not be responsible for the whole cost of the carpet cleaning due to the water stains caused by the furnace. Consequently, I find that the Landlord is entitled to **\$144.00** for general cleaning (8 hours @ \$18.00 per hour) and **\$100.00** for carpet cleaning (or approximately 75% of the amount for steam cleaning).

The move in condition inspection report submitted by the Landlord indicates that the kitchen and living room were freshly painted at the beginning of the tenancy and further indicates that the bedroom walls were in good to fair condition. The Landlord said he

believed the bedrooms were freshly painted as well but that he forgot to write it in the move in Report. The Tenants claim the walls were not painted in the bedrooms at the beginning of the tenancy. Section 21 of the Regulations to the Act says that a condition inspection report completed in accordance with the Regulations, is evidence of the state of repair and condition of the rental unit on the date of inspection unless a Party has a preponderance of evidence to the contrary. Consequently, I conclude that the bedrooms were not painted at the beginning of the tenancy.

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. I find on a balance of probabilities that the dirt on the bedroom walls and part of the living room is reasonable wear and tear for which the Tenants are not responsible. However, I find that the Tenants are responsible for the repairs to the kitchen. As a result, I find that the Landlord is entitled to recover 25% of the amount claimed for painting supplies and labour or **\$175.00**.

I also find that the Landlord is entitled to recover **\$15.41** for re-keying the locks at the end of the tenancy because the Tenants did not return the keys. The Landlord is also entitled to recover **\$8.95** for a light cover the Tenants admitted that they broke, however there is insufficient evidence that the Tenants removed 2 sink stoppers or broke a closet rod and those parts of the Landlord's application are dismissed. As the Landlord had been successful in this matter, he is also entitled to recover the **\$50.00** filing fee for this proceeding.

I order pursuant to s. 38(4) of the Act, that the Landlord keep the Tenants' security deposit and 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:	\$750.00
General cleaning:	\$144.00
Carpet cleaning:	\$100.00
Painting:	\$175.00
Re-Keying locks:	\$15.41
Light cover:	\$8.95
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,243.36
Less: Security deposit:	(\$375.00)
Accrued interest:	<u>(\$8.28)</u>
Balance owing:	\$860.08



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Conclusion

A monetary order in the amount of **\$860.08** 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 03, 2009.

Dispute Resolution Officer