



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial compensation of the claim.

The landlord and one of the two tenants, GA, participated in the teleconference hearing. The landlord named both tenants, GA and JA, as respondents on this application, but he was only able to serve GA with notice of the hearing. Accordingly, I amended the application to only name GA as the sole respondent in this matter.

Issues(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on February 1, 2009 as a fixed-term tenancy to end on January 31, 2010. The rental suite is a strata unit. The landlord did not charge the tenants a strata move-in fee or make the tenants aware that there was such a fee. On February 6, 2009 the tenant GA signed a notice from the strata which required that if the tenant contravened a strata bylaw or rule, the tenant would be responsible for any penalties or fines. A clause in the addendum to the tenancy agreement requires the tenants to pay two months of additional rent if they break the lease. Monthly rent was \$1140. On January 24, 2009 the tenants paid the landlord a security deposit of \$570, and on March 13, 2009 the tenants paid a pet deposit of \$430. On February 1, 2009 the tenants and

the landlord conducted a move-in inspection but did not fill out a move-in inspection report.

The tenants did not pay their rent in April, May and July 2009, and on July 2, 2009 the landlord served the tenants with a notice to end tenancy for unpaid rent. The tenants moved out and returned the keys to the landlord on July 20, 2009. The tenants did not sign a move out inspection report.

The landlord has submitted a monetary claim for several items. In the hearing the tenant acknowledged the landlord's claim for two of those items, which are \$3420 in unpaid rent for April, May and July 2009 and \$147 for carpet cleaning. The remaining items of the landlord's claim are as follows:

- 1) \$2280 representing two months of rent, as per the addendum of the tenancy agreement, on the basis that the tenants broke the lease;
- 2) \$100 for the strata move-in fee, on the basis that the landlord is required to pay a strata fee when any new tenant moves in, and the tenants broke the lease;
- 3) \$850 for painting the rental unit – the walls of the rental unit were damaged with several holes, which required a lot of filling, and it was necessary to repaint the unit afterward;
- 4) \$461.17 for repairs – the landlord submitted an invoice for the following repairs: replacing various light bulbs; repairing several bi-fold doors and the patio screen door; and removing garbage and the tenants' belongings from the suite and storage locker. The invoice indicates a charge of \$26.71 for materials and \$412.50 for 7.5 hours of labour at \$55 per hour, plus applicable tax.
- 5) \$270 for 9 hours of cleaning at \$30 per hour – the landlord submitted photographs of the rental unit to support the claim for cleaning costs.

The tenant's response on each of these items was as follows. The tenant signed the tenancy agreement and the addendum with the expectation that he would be there for a long term, but his ex-wife, the other tenant, threw him out. The tenant was not aware of

the \$100 strata move-in fee. The tenant disputes the landlord's claim for damage to the walls and unit, and states that they only incurred normal wear and tear. The photographs show only minimal damage, and the landlord was making it sound worse than it really was. The only item that was damaged was a closet door. The tenant also disputes the cleaning cost, because he did cleaning of the unit before returning the keys to the landlord.

Analysis

The landlord is entitled to the amounts of \$3420 for unpaid rent and \$147 for carpet cleaning. In considering the documentary, photographic and testimonial evidence of both parties on the remaining items, I find as follows.

The landlord is not entitled to the amount claimed for breaking the lease. In a fixed-term lease, a landlord may include a clause in the tenancy agreement requiring the tenant to pay liquidated damages if the tenant breaks the lease before the end of the term. However, this amount must be a genuine pre-estimate of the landlord's costs associated with the breach of the lease. Further, liquidated damages must not be a penalty. In this case, the landlord did not provide evidence that the amount claimed was a genuine pre-estimate of the costs of re-renting, and I find that the amount claimed of \$2280 is extravagant in comparison to the greatest loss that could follow a breach of this tenancy. I therefore find that this clause is a penalty clause, and therefore unenforceable.

The landlord is not entitled to the amount for the strata move-in fee. The tenant signed a strata form acknowledging he would be responsible for any fees or penalties related to breaches of the strata's rules or bylaws, not for breaching the tenancy agreement. The landlord did not inform the tenant that the move-in fee would be part of the cost incurred for breaking the lease.

The landlord did not complete a move-in inspection report with the tenants, and therefore the landlord cannot effectively establish what the condition of the rental unit was at the outset of the tenancy. The tenant only acknowledged damage to one closet door, and the repair invoice does not detail what costs were incurred for which items. I therefore find that the landlord is not entitled to claim for painting or repairs.

In regard to cleaning, the landlord's photographs do depict some dirty areas of the rental unit, and I accept that some cleaning was required. However, I do not find the cleaner's rate of \$30 per hour to be reasonable. The landlord did not provide evidence to show that they obtained quotes to have the cleaning done for a more reasonable cost. Nor did the landlord provide sufficient evidence to establish that nine hours of cleaning was required. I therefore reduce the amount for cleaning to \$100, based on an hourly rate of \$20 per hour for 5 hours of cleaning.

The landlord is entitled to a total claim of \$3667. As the landlord's claim was partially successful, I find the landlord is entitled to partial recovery of the filing fee, in the amount of \$25, for a total of \$3692.

Conclusion

The landlord is entitled to a total of \$3692, for the unpaid rent, carpet cleaning, cleaning and partial recovery of the security deposit. The remainder of the landlord's application is dismissed.

I order that the landlord retain the security and pet deposits of \$1000 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2692. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: December 7, 2009.

Dispute Resolution Officer