

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a monetary order for compensation for damage or loss under the Act or tenancy agreement, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial satisfaction of those amounts.

At the beginning of the hearing the Tenants claimed that they had not received any of the Landlord's evidence. The Landlord's agent claimed that he sent an evidence package to the Tenants sometime in January 2010 by regular mail. In the absence of any evidence to support the Landlord's claim, I cannot conclude that the Tenants were served with the Landlord's evidence. The Tenants objected to an adjournment to be re-served with the Landlord's evidence as they said they were moving out of the country very soon. In the circumstances, I find that where the authenticity of the Landlord's evidence is in dispute, that evidence will be excluded under Rule of Procedure 11.5(b).

Issues(s) to be Decided

1. Is the Landlord entitled to compensation for liquidated damages?
2. Is the Landlord entitled to compensation for painting and carpet cleaning expenses?
3. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This fixed term tenancy started on March 1, 2009 and was to expire on February 28, 2010, however it ended on October 31, 2009 when the Tenants moved out. Rent was \$1,500.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$750.00 at the beginning of the tenancy.

The Parties agree that the Landlord's agent showed the rental unit approximately 7 or 8 times prior to the end of the tenancy and was able to re-rent the rental unit for November 1, 2009. The Landlord's agent said he did a move out condition inspection with the Tenants on October 31, 2009 and completed a report but the Tenants would not sign it and would not take a copy. The Tenants deny that they were asked to participate in a move out inspection and claim that they never received a copy of a report from the Landlord.

The Landlord's agent claimed that it was the Landlord's policy to repaint each rental unit prior to each tenancy and as a result, he sought to recover those expenses from the Tenants. The Tenants claim that at the beginning of the tenancy they were told the Landlord would repaint the rental unit for each tenancy but argued they were never told they would be responsible for that cost. The Landlord's agent also claimed that it was a

term of the tenancy agreement that the Tenants would have the carpets in the rental unit *professionally cleaned* at the end of the tenancy. The Tenants said they steam cleaned the carpets at the end of the tenancy.

Analysis

RTB Policy Guideline #4 (Liquidated Damages) says at page 1 that in order for a liquidated damages clause in a tenancy agreement to be enforceable, “the amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and will be unenforceable.” One indicator that may suggest that a term of a tenancy agreement is a penalty clause rather than a liquidated damages clause is if the amount is extravagant compared to the loss that could occur. I find that the amount sought for liquidated damages is not extravagant but rather is a reasonable pre-estimate of what would compensate the Landlord’s agent for his time to try to re-rent the rental unit. Consequently, I find that the Landlord is entitled to recover \$750.00 as liquidated damages.

The Parties tenancy agreement contains a clause (#27) that the Tenants will have the carpets professionally cleaned at the end of the tenancy. Despite this clause, RTB Policy Guideline #1 says at p. 2 that a tenant is only responsible for carpet cleaning after a tenancy of about a year unless the tenant has had pets or smoked inside the rental unit. The Tenants admitted that they had a cat in the rental unit during the tenancy and as a result, I find that the Landlord was entitled to require the Tenants to have carpets professionally cleaned at the end of the tenancy. The Landlord sought \$94.00 for this expense which I find reasonable and award him that amount.

There is nothing in the Parties’ tenancy agreement about the Tenants being responsible for the cost of repainting a rental unit at the end of a tenancy. RTB Policy Guideline #1 at p. 4 says that a landlord is responsible for painting the interior of the rental unit at reasonable intervals unless the tenant has caused damages beyond reasonable wear and tear. Although the Landlord argued that there were nail holes in the walls that had to be filled, sanded and repainted, there is nothing on the copy of the condition inspection report provided by the Landlord that indicates there was any damage to the walls. Consequently, I find that there is insufficient evidence in support of this part of the Landlord’s claim and it is dismissed.

As the Landlord has been successful on his claim, I find that he 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 in partial satisfaction of the liquidated damages award. The Landlord will receive a monetary order for the balance owing as follows:

Liquidated damages:	\$750.00
Carpet cleaning:	\$94.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$894.00

Less: Security deposit:	(\$750.00)
Accrued interest:	<u>(\$0.00)</u>
Balance Owing:	\$114.00

Conclusion

A monetary order in the amount of **\$114.00** 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: March 16, 2010.

Dispute Resolution Officer