

Decision

Dispute Codes:

MNR, MND, MNSD; MNDC; FF

Introduction

This is the Landlord's application for a Monetary Order for unpaid rent, damage to the rental unit and compensation for damage or loss; to retain the security deposit in partial satisfaction of his monetary award, and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent and damages, and if so, in what amount?

Background and Evidence

This tenancy started on November 1, 2008, and ended on October 31, 2009. Monthly rent was \$2,495.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$1,247.50 on October 2, 2008. A copy of the tenancy agreement was entered in evidence.

A move-in Condition Inspection Report was completed at the beginning of the Tenancy and signed by both parties. A Condition Inspection Report was completed at the end of the tenancy on October 31, 2009, and a copy was entered in evidence.

Both parties provided photographs in evidence.

The Landlord is claiming damages, as follows:

Description	Amount claimed
Cleaning the rental unit (10 hours @ \$25.00/hr, Landlord's labour)	\$250.00
Cost to replace carpet in family room	\$448.96
Cost to replace carpet in 2 nd kitchen/LR/DR	\$493.12
Cost to replace kitchen/laundry door	\$102.00
Cost to replace storm door	\$249.00
Cost to replace window screens	\$143.80
Cost to replace bifold mirror	\$169.00
Cost and labour to repair broken wheel on gate	\$100.00
Cost to replace door in master bedroom bathroom	\$98.00
TOTAL CLAIM FOR DAMAGES	\$2,053.88

The Landlord is also claiming unpaid rent for the month of October, 2009.

The Tenant disputed the Landlord's claim. She stated that they were rushed out of the rental unit early when the owners showed up at started moving in at 10:00 a.m. The Tenant testified that she had started to clean the oven and stove top, but only had time to spray it with oven cleaner. The carpets in the rest of the house were shampooed, but she had didn't have time to shampoo the carpets in the family room because they were rushed out early. The Tenant stated that the house was about 15 years old, and the carpets were original carpets. She stated that there were ongoing problems with maintenance issues throughout the tenancy, and the Landlord had not addressed them. The Tenant provided documentary evidence of written notification regarding problems with the fridge; tap on kitchen sink; ants; leaking toilets; hot water tank; house alarm and door bell.

The Tenant testified that the rent cheque for October, 2009, had been cashed by the Landlord. She stated that she gave the Landlord's agent post-dated cheques for the term of the tenancy, and that the Landlords agent had misplaced the cheques. She provided them with replacement cheques. Both post-dated cheques for July, 2009, rent were attempted to be cashed. A copy of the Tenant's bank statement for July, 2009, was entered in evidence. The Tenant testified she cancelled the remaining post-dated cheques and provided the Landlord with three more post-dated cheques for August,

September and October, 2009. The Tenant provided a copy of a receipt for these post-dated cheques in evidence.

The Landlord's agents agreed that the rental unit was approximately 12 to 15 years old and that the carpets were at least 10 years old. They were uncertain when the rental unit was last painted.

Analysis

The Condition Inspection Report indicates that the rental unit was basically in the same condition of repair and cleanliness at move-out as it was when the Tenants moved in.

Paragraph 1 of the Tenancy Agreement states: "... the Lessee shall vacate the Premises by 1 p.m. on the 31st day of October, 2009." I accept the Tenant's undisputed testimony that the Owners moved into the rental unit three hours early on October 31, 2009, and that the Tenant did not have time to finish cleaning the rental unit. The Landlords are claiming for damages, most of which existed when the Tenant's moved in, as is supported by the Condition Inspection Report entered in evidence by the Tenant. The remainder of the Landlord's claim for damages relates to items that I find are reasonable wear and tear.

Therefore, I dismiss the Landlord's claim for damages in its entirety.

The documentary evidence provided by the Tenant supports her claim that 2 cheques were attempted to be cashed for July, 2009 rent, after she had been told that the Landlord had not received, or had misplaced, the first set of post-dated cheques. The Landlord did not provide documentary evidence to support his claim that the October, 2009, rent had not been paid (i.e. a copy of the ledger for the Tenant's rent payments, or a copy of his October, 2009, bank statement). Therefore, I accept the Tenant's testimony that her rent cheque for October, 2009, was cashed by the Landlord. I dismiss the Landlord's application for a monetary order for unpaid rent.

The Landlord has not been successful in his application and is not entitled to recover the cost of the filing fee from the Tenants.

I hereby order that the Landlord return the security deposit, together with accrued interest in the amount of \$4.65, to the Tenant's forthwith. I hereby provide the Tenants with a Monetary Order in the amount of \$1,252.15.

Conclusion

The Landlord's application is dismissed in its entirety without leave to reapply.

I hereby provide the Tenants with a Monetary Order in the amount of \$1,252.15 against the Landlord. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) 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: April 1, 2010