



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for Monetary Order for unpaid rent, for compensation for damage to the unit, site or property, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on August 18, 2010. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and Tenants in attendance.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Are there damages and if so how much?
4. Is the Landlord entitled to compensation for the damages?
5. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on October 15, 2009 as a 1 year fixed term tenancy with an expiry date of November 1, 2010. Rent was \$1,050.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$525.00 on October 6, 2009. The Tenants' said they moved out of the unit on July 31, 2010.

The Landlord said the Tenants' gave him written notice on July 7, 2010 to move out July 31, 2010, which is earlier than the Tenancy agreement which ended on November 1, 2010. As a result he is claiming monetary compensation for rent for the month of August, 2010 of \$1050.00 and the difference between the new rental amount of \$995.00 and the previous rental amount of \$1,050.00 or \$55.00 per month for September, 2010 and October, 2010. He said the new tenants signed a tenancy agreement on August 30, 2010 and moved in on September 1, 2010.

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The Landlord continued to say that he is also seeking to receive a monetary claim for \$60.00 for cleaning which the Tenants agreed to on the inspection report and \$90.00 for carpet cleaning. The Landlord said the Tenant's did clean the carpets themselves, but the carpets had to be redone professionally to bring them to a standard for the unit to be rented out again.

The Tenant said that they gave verbal notice that they were moving out at the end of July, 2010, on July 1, 2010, but were told they had to give written notice to end the tenancy. They gave written notice to end the tenancy on July 7, 2010 with an effective move out date of July 31, 2010. The Tenants moved out July 31, 2010. They said that they had difficulties contacting the property manager which resulted in the late filing of their written notice to end tenancy. They said the vacancy date should be July 31, 2010 as on the notice to end tenancy dated July 7, 2010 as they gave verbal notice July 1, 2010. They said they do not believe they should owe for the August, 2010 rent.

The Tenants continued to say they did the move out inspection report with the Property Manager and they agreed to the \$60.00 for cleaning the stove, but nothing was said about the carpets and the carpets were check off on both the inspection reports as in the same condition. They said they had rented a Rug Doctor Carpet cleaning unit and cleaned all the carpets.

Analysis

Section 45 (2) says a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 7(2) says a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The Tenants gave written notice on July 7, 2010 and although the notice states a move out date of July 31, 2010, the proper effective vacancy date to comply with section 45 (2) of the Act is August 30, 2010. This is due to a full months notice is required prior to the day in the month that rent is normally due. So if notice is given under section 45 (2) on any day in July, 2010, the vacancy date is August 30, 2010 unless another dated is agreed to by the Landlord. The Landlord received written notice to end the tenancy on July 7, 2010 and had possession of the unit July 31, 2010. The Landlord has an obligation under section 7(2) to mitigate any potential lost of rent from the early end of the tenancy. I find the Tenants' are responsible for the August, 2010, rent in the amount of \$1,050.00 as the Landlord did rent the unit on the first day of the month following his possession of the unit, which did mitigated further losses from the early end of the previous tenancy.

I also find that the Landlord is entitled to the \$60.00 agreed to on the move out inspection report for cleaning. I dismiss the Landlord's claim for carpet cleaning as the Tenants' did clean the carpet before vacating the unit and the inspection reports showed the carpets are in the same condition on move in and move out reports. In addition I dismiss the Landlord's claim for \$55.00 per month for September and October, 2010 as the difference between the new and previous rental amounts as this tenancy ended as of August 30, 2010. The Tenants' are not responsible for any losses that the Landlord has due to a new rental amount.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

Loss of Rental Income:	\$1,050.00
Cleaning costs	\$ 60.00
Recover filing fee	<u>\$ 50.00</u>
Subtotal:	\$1,160.00



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Less:	Security Deposit	\$ <u>525.00</u>
	Subtotal:	\$ 525.00
	Balance Owing	\$ 635.00

Conclusion

A Monetary Order in the amount of \$635.00 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.
