



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MND, MNDC, MNR, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for damage to the rental unit; for a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the address noted on the Application, on November 03, 2010. The Landlord submitted Canada Post documentation that corroborates this statement. The Landlord submitted a copy of the envelope associated to the registered mail. Notations on the envelope indicate that it was unclaimed by the recipient. The Landlord stated that the service address on the Application for Dispute Resolution was a forwarding address provided to him by the Tenant, via email, on September 08, 2010. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Act*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for loss of revenue, to compensation for cleaning the rental unit, and replacing carpet; to retain all or part of the security deposit paid by the Tenant; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord submitted a tenancy agreement that shows the Landlord and the Tenant entered into a fixed term tenancy that began on April 17, 2009 and was scheduled to

end on August 31, 2010; that the Tenant was required to pay monthly rent of \$1,400.00; and that the Tenant paid a security deposit of \$700.00.

The Landlord stated that the Tenant vacated the rental unit on April 30, 2010 and that the Tenant provided the Landlord with her forwarding address, via email, on September 08, 2010. The Landlord could not recall when he filed his Application for Dispute Resolution, however Residential Tenancy Branch records indicate that it was filed on October 30, 2010.

The Landlord is claiming compensation for loss of revenue, in the amount of \$5,600.00, as he was unable to find new tenant for the rental unit until August 14, 2010. He stated that he advertised the rental unit on one popular website sometime April of 2010 and that he advertised continually on that website until a new tenant was found; that he advertised the rental unit on a second popular website, although he cannot recall when he started advertising on that website, and that he advertised continually on that website until a new tenant was found; and that he periodically advertised the rental unit in the local newspaper, although he cannot recall which weeks he advertised in the print media.

A condition inspection report was completed at the beginning of this tenancy, on August 21, 2009, copy of which was submitted in evidence. The report, which appears to have been signed by the Tenant, indicates that there were several deficiencies with the rental unit; that the living room carpet was stained; that there was a red dot on the flooring in bedroom #3; that there was a small stain on the carpet in bedroom #4; and that the oven was dirty.

A condition inspection report was completed at the end of this tenancy, on April 30, 2010, copy of which was submitted in evidence. The report, which appears to have been signed by the Tenant, indicates that there were several deficiencies with the rental unit; that the living room carpet was stained; that there was a small stain on the carpet in bedroom #4; that the carpet in the master bedroom was stained; that the carpet in bedroom #3 was stained and dirty; that the flooring, wall, banister, and closet in the stairwell/hallway were dirty; that there was a green sticky mark on the dining room ceiling; that the floor, tub, and door in the bathroom were dirty; that the door in the master bedroom was dirty; that the walls, windows, window coverings, and light fixtures in bedroom #3 were dirty; and that the windows and window coverings in the basement bedroom were dirty; that the carpet in the basement bedroom was stained and dirty; that the front door and patio were dirty; that the oven, dishwasher, and kitchen exhaust hood were dirty; and that the washer/dryer and sink in the utility room were dirty.

The Landlord submitted photographs of the rental unit that clearly show the carpets required cleaning. The photographs show that the walls, doors, and door frames needed additional wiping in some areas; that there was a green mark on the ceiling; that the bathtub needed additional cleaning; and that one cupboard needed cleaning.

The Landlord submitted a letter from an agent for the Landlord who stated that in addition to the aforementioned cleaning, he noted that the area behind the refrigerator had not been cleaned and that there were toys and other small objects in a cold air return vent; that the house smelled of urine; and that a large plant had been left on the balcony.

The Landlord submitted an unsigned letter from two people who are identified by name at the bottom of the letter. The letter declares that these two people spent sixty hours cleaning the rental unit and "completing minor repairs". The author(s) noted that there were feces and urine stains throughout the house and that the smell of urine could not be eradicated. The Landlord stated that these individuals are personal friends; that he paid them \$1,500.00 in cash for the time they spent working at his rental unit; and that he does not know how much of their time was spent cleaning the rental unit and how much was spent making "minor repairs". The Landlord is claiming compensation of \$1,500.00 for the time spent cleaning the rental unit.

The Landlord is claiming compensation of \$7,100.00 for the cost of replacing the carpet in four bedrooms and the living room. The Landlord stated that the carpets were significantly more stained at the end of the tenancy than they were at the beginning of the tenancy; that he had them professionally cleaned by a restoration company in June of 2010 but that they still smelled of urine in August of 2010; that there was human feces on a carpet in an upstairs bedroom; and that it appeared that the stains in the basement bedroom was caused by pet urine.

The Landlord submitted a letter from a realtor who declared that the carpets had been stained by pet excrement and that the carpets needed replacing before the property could be sold.

The Landlord stated that the carpets have not yet been replaced and that the claim of \$7,100.00 is based on an estimate for the cost of replacing the carpets. The Landlord did not submit any documentary evidence to corroborate his estimate that it will cost \$7,100.00 to replace the carpets throughout the house.

Analysis

On the basis of the evidence provided by the Landlord, I find that the Landlord and the Tenant entered into a fixed term tenancy that began on April 17, 2009 and was scheduled to end on August 31, 2010; that the tenancy agreement required the Tenant to pay monthly rent of \$1,400.00; that the Tenant paid a security deposit of \$700.00; and that the Tenant vacated the rental unit on April 30, 2010.

I find that the Tenant did not comply with section 45(2) of the *Act* when she ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. I find that the Landlord made reasonable attempts to advertise the rental unit but was unable to find a new tenant for the rental unit until August 14, 2010. I

therefore find that the Tenant must compensate the Landlord for any losses the Landlord experienced as a result of the Tenant's non-compliance with the *Act*, pursuant to section 67 of the *Act*.

In these circumstances, I find that the Tenant must pay \$1,400.00 to the Landlord for the loss of revenue that the Landlord experienced in May of 2010; \$1,400.00 to the Landlord for the loss of revenue that the Landlord experienced in June of 2010; \$1,400.00 to the Landlord for the loss of revenue that the Landlord experienced in July of 2010; and \$587.08 to the Landlord for the loss of revenue that the Landlord experienced for the period between August 01, 2010 and August 13, 2010.

On the basis of evidence submitted by the Landlord and in the absence of evidence to the contrary, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to leave the rental unit in reasonably clean condition. In determining that the rental unit was not left in reasonably clean condition, I was influenced by both the condition inspection report that was completed at the end of the tenancy and the photographs that were submitted in evidence.

As the Tenant did not leave the rental unit in reasonably clean condition, I find that the Landlord is entitled to compensation for cleaning the rental unit. On the basis of evidence submitted by the Landlord and in the absence of evidence to the contrary, I accept the Landlord's testimony that he paid \$1,500.00 to two friends to clean the rental unit and to repair a variety of deficiencies with the rental unit. In the absence of evidence that clearly establishes how much time the friends spent cleaning the rental unit and how much time they spent repairing deficiencies, I find that the Landlord has not establish that he paid \$1,500.00 to his friends for cleaning the rental unit.

Based on the documentary evidence submitted by the Landlord and, in particular, the photographs that were submitted in evidence, I find that it would have taken approximately thirty hours to restore the rental unit to a reasonably clean condition. I have not included cleaning the oven in this estimate, as the evidence shows the oven was not clean at the beginning of the tenancy. I find that the Landlord is entitled to compensation for the thirty hours I estimate it would take to clean the rental unit, at a rate of \$25.00 per hour, which is \$750.00.

On the basis of evidence submitted by the Landlord and in the absence of evidence to the contrary, I find that the Tenant failed to comply with section 37(2) of the *Act* when they failed to restore the carpets to the same (or similar) condition to the condition they were in at the start of the tenancy. In determining that the carpets were not restored to a similar condition, I was heavily influenced by the photographs of the carpet, by the testimony of the Landlord that they smelled of urine after they were professionally cleaned, and by the documentary evidence from several witnesses who declared the carpets smelled of urine.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages

includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

In addition to establishing that this Tenant damaged the carpets in the rental unit, the Landlord was also obligated to accurately establish the cost of replacing the carpets. In these circumstances, I find that the Landlord failed to establish the true cost of replacing the carpets. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlord's statement that it will cost \$7,100.00 to replace the carpets. On this basis, I award nominal damages in the amount of \$1.00. This award merely serves to recognize that the Landlord has suffered a loss and is not meant to compensate him for the amount of his loss.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord failed to comply with section 38(1), as the Landlord has not repaid the security deposit and he did not file his Application for Dispute Resolution until October 30, 2010, which is more than fifteen days after this tenancy ended on April 30, 2010 and more than fifteen days after he received the Tenant's forwarding address by email on September 08, 2010.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit that was paid.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$5,638.08, which is comprised of \$4,787.08 for loss of revenue, \$750.00 for cleaning the rental unit, \$1.00 in nominal damages, and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I find that the Landlord's monetary claim must be reduced by the security deposit of \$700.00 paid by the Tenant, leaving a balance of \$4,938.08.

I find that the Landlord's monetary claim must be further reduced by the \$700.00 that he owes the Tenant pursuant to section 38(6) of the Act, leaving a balance of \$4,238.08.

Based on these determinations I grant the Landlord a monetary Order for the amount \$4,238.09. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court 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: February 25, 2011.

Residential Tenancy Branch