



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call to deal with the landlords' application for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to retain all or part of the security deposit or pet damage deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

An agent for the landlord company attended the conference call hearing, gave affirmed testimony and provided evidence in advance of the hearing. Despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on November 16, 2010, the tenant did not attend the conference call hearing. All information and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage to the unit, site or property?
Are the landlords entitled to a monetary order for unpaid rent or utilities?
Are the landlords entitled to retain all or a portion of the security deposit or pet damage deposit?
Are the landlords entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This tenancy began as a fixed term tenancy on January 1, 2004 and expired on December 31, 2004 and then reverted to a month-to-month tenancy. The tenancy ended on December 3, 2009. Rent in the amount of \$736.00 was payable in advance on the 1st day of each month. On December 4, 2003 the landlord collected a security deposit from the tenant in the amount of \$337.50.

The landlord's agent testified that a letter was received by the landlord on November 15, 2009 from the son of the tenant stating that the tenant would be moving from the rental unit on December 15, 2009. The tenant vacated the rental unit on December 3, 2009 or sooner without paying rent for that month. The landlord claims \$736.00 less \$11.56 which was over-paid by the tenant in a previous month.

The landlord's agent further testified that the tenant did not clean the unit prior to vacating, and the landlord claims \$25.00 for drapery cleaning in the living room; \$60.00 for garbage removal; \$100.00 for general cleaning of the rental unit; and paint and wall repair for \$315.00. She stated that \$55.00 was for wall repair and the balance was for painting and GST. The landlord provided a "Resident Manager's Payroll Advice" which shows that \$125.00 for this suite was paid on December 5, 2009 to an employee for cleaning the suite and drapes. Also provided is a copy of an invoice dated November 24, 2009 showing that \$60.00 was paid for rubbish removal. The landlord's agent testified that the tenant left earlier than the date indicated on the move-out condition inspection report, and returned on that date to conduct the inspection.

The landlord's agent also provided a copy of the move-in/move-out condition inspection report which was signed by the tenant at move-in on January 9, 2004, and the landlord's agent testified that the tenant was present when the move-out condition inspection report was completed, but he did not agree with it and refused to sign the form.

Photographs of the rental unit were also provided in advance of the hearing, and show that the stove had not been cleaned, items were left behind, stains appear on the carpet, the drapes required cleaning, as well as the bathroom, and general cleaning of the unit was not completed.

Analysis

The *Residential Tenancy Act* states that a tenant is expected to leave a rental unit reasonably clean and undamaged except for reasonable wear and tear. I find that the tenant did not leave the unit reasonably clean, and the landlord has established a claim for the drapery cleaning and general cleaning. With respect to the rubbish removal, I note that the invoice is dated prior to the tenant vacating the rental unit. However, I also find that the landlord has established that the tenant left numerous items behind when he vacated, and I accept the evidence of the landlord's agent that the tenant left prior to December 3, 2009 and returned on that date to conduct the inspection, and as such I find that the landlord has established the claim for rubbish removal.

With respect to painting the unit, I note that the tenant moved in on January 1, 2004 and moved out almost 6 years later. I also note that the move-in condition inspection report shows that the walls in the living room at that time were damaged near the TV, marked in the bathroom, and damaged in the hall or stair area. An award for damages is meant to be restorative, meaning that the award must not put the claiming party in a better financial position when the tenant moves out than when he moved in. I further find that the landlord would have been required to re-paint the unit before a new tenant moved in, and therefore the landlord has not established a claim for painting. With respect to wall repair, the landlord has failed to establish that the tenant is responsible for any wall repair. The move-in/out condition inspection report shows that some walls were chipped when the tenant moved in, and I find that the landlord has failed to establish that more wall repair was required over and above the chips in the walls at the outset of the tenancy.

In summary, I find that the landlord has established a claim for \$724.44 in unpaid rent; \$25.00 for drapery cleaning; \$60.00 for garbage removal; and \$100.00 for general cleaning of the rental unit. The landlord is also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, I order that the landlord retain the security deposit and interest in the amount of \$349.44 and I grant the landlord a monetary order for the balance of \$610.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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 21, 2011.

Residential Tenancy Branch