



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlords for unpaid rent, for compensation for a loss of rental income, for liquidated damages for ending the tenancy early, for cleaning and repair expenses, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord (L.D.) said she served the Tenant on November 19, 2010 with the Application and Notice of Hearing (the "hearing package") by registered mail to a forwarding address the Tenant provided. The Landlord (L.D.) said she also served the Tenant with a copy of the amended application and evidence package by registered mail on February 21, 2011 to the same address. Based on the evidence of the Landlords, I find that the Tenant was served with the Landlords' hearing package and amended application as required by section 89 of the Act and the hearing proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Are the Landlords entitled to compensation for a loss of rental income?
3. Are the Landlords entitled to liquidated damages?
4. Are the Landlords entitled to compensation for cleaning and repair expenses?
5. Are the Landlords entitled to keep the Tenant's security deposit?

Background and Evidence

This fixed term tenancy started on May 20, 2010 and was to expire on May 31, 2011 however it ended on November 15, 2010 when the Tenant moved out. Rent was \$1,275.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$637.50 at the beginning of the tenancy.

The Landlords provided a copy of the Tenant's payment ledger which shows that the Tenant had parking arrears of \$45.00 for October 2010, parking and rent arrears for November 2010 of \$1,320.00 and was charged a late fee of \$20.00 for a total of \$1,385.00. The Landlord (L.D.) said she was able to re-rent the rental unit as of December 15, 2010 and therefore she also sought a loss of rental income for 14 days of

December 2011. The Landlords further sought liquidated damages of \$300.00 due to the Tenant ending the tenancy early pursuant to a term of the tenancy agreement to that effect.

The Landlords completed a move in condition inspection report with the Tenant on May 20, 2010 and a move out condition inspection report on November 15, 2010. The Landlords said the Tenant did not leave the rental unit reasonably clean at the end of the tenancy and claimed that carpet and drape cleaning as well as re-painting of the whole rental unit was required because the Tenant smoked during the tenancy. The Landlords also claimed that it incurred expenses for general cleaning. The Landlords provided copies of invoices for all of these expenses in support of their claim.

Analysis

In previous proceedings between these parties held on October, 15, 2010, the Dispute Resolution Officer found that the Tenant was “current in his rent and parking fees through the month of October, 2010.” Consequently, I find that the Landlords are not entitled to recover \$45.00 for October 2010 parking charges. In the absence of any evidence from the Tenant to the contrary, I find that the Landlords are entitled to recover unpaid rent, parking charges and a late fee for November 2010 in the total amount of **\$1,340.00**.

Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that it incurs as a result. Section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income. In the absence of any evidence from the Tenant to the contrary, I find that the Landlords took reasonable steps to re-rent the rental unit. I also find that the Landlords suffered a loss of rental income for the period December 1 – 14, 2010 and are therefore entitled to recover a loss of rental income of **\$575.81**.

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 as a result will be unenforceable.” In the absence of any evidence from the Tenant to the contrary, I find that the term of the Parties tenancy agreement that provides for the payment of \$300.00 “for administration costs of re-renting the rental unit” is an enforceable clause. Consequently, I find that the Landlords are also entitled to recover liquidated damages of **\$300.00** due to the Tenant ending the fixed term tenancy early.

Section 37 of the Act says that at the end of a tenancy, the Tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. The condition inspection report completed at the beginning of the tenancy shows that the rental unit was clean and in good condition. The move out condition inspection report completed at the end of the tenancy shows that it allegedly required additional cleaning. The Tenant did not sign the move out condition inspection report.

Section 20 of the Regulations to the Act lists the standard information that must be contained in a condition inspection report. I find that the condition inspection report submitted by the Landlords is deficient in that it does not contain the information required under s. 20(1)(j) and (k) of the Regulations to the Act which provides the Tenant with the ability to disagree with the report and state the reasons why. I also find that the Landlords have failed to complete the required information set out in s. 20(2)(a) of the Regulations which requires that any damages for which the Tenant will be held responsible are itemized.

The Landlords claimed that the cleaning and repair expenses were made necessary because the Tenant smoked in the rental unit during the tenancy. RTB Policy Guideline #1 states at p. 2 that a Tenant will be held responsible for cleaning carpets and drapes at the end of a tenancy where the Tenant has smoked in the rental unit. Consequently, I find that the Landlords are entitled to be compensated for carpet cleaning expenses. The Landlord provided a receipt for carpet cleaning expenses of \$72.80 for the rental unit however that receipt is dated February 18, 2011, almost 3 months after the tenancy ended and 2 months after a new tenant took possession of the rental unit. Consequently, I find that the Landlord has provided insufficient evidence to make out a claim for carpet cleaning and it is dismissed without leave to reapply. However, I find that the Landlord is entitled to recover drape cleaning expenses of **\$20.00**.

I find that there is insufficient evidence to conclude that the Tenant should be responsible for expenses of re-painting the rental unit because he smoked. The Tenant only rented the rental unit for 6 months and there is nothing in the tenancy agreement that prohibited him from smoking. Furthermore, the move out condition inspection report does not indicate that re-painting is necessary to address an alleged residual odour from smoking and the invoice for that expense does not indicate any reason for the re-painting.

The Landlords also provided an invoice for general cleaning expenses of \$210.00 however it contains no information as to how many hours of cleaning that amount related to. Based on a reasonable rate of \$20.00 per hour, this expense would mean there was 10 hours of cleaning which I find is excessive for a one bedroom suite which the Tenant occupied for only 6 months. Furthermore, the move out condition inspection report contains only a large "R" written in the box for each room of the suite which indicates that further cleaning is required. As indicated above, the Tenant refused to sign this document and there is no other reliable evidence to corroborate the Landlords' claim that this amount of cleaning, if any, was required.

For the above-noted reasons, I find that there is insufficient evidence to support the Landlords' claim for general cleaning and re-painting expenses and they are dismissed without leave to reapply. As the Landlords have been largely successful on their claim, they are entitled pursuant to s. 72 of the Act to recover from the Tenant the **\$50.00** filing fee they paid for this proceeding.

I order the Landlords pursuant to s. 38(4) of the Act to keep the Tenant's security deposit in partial payment of the monetary award. The Landlords will receive a Monetary Order for the balance owing as follows:

Unpaid Rent (November 2010):	\$1,275.00
Unpaid Parking (November 2010):	\$45.00
Late Payment fee:	\$20.00
Loss of rental income (Dec. 2010)	\$575.81
Liquidated Damages:	\$300.00
Drape Cleaning:	\$20.00
Filing Fee:	<u>\$50.00</u>
Subtotal:	\$2,285.81
Less: Security Deposit:	<u>(\$637.50)</u>
Balance Owing:	\$1,648.31

Conclusion

A Monetary Order in the amount of **\$1,648.31** has been issued to the Landlords and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, 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 21, 2011.

Residential Tenancy Branch