



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for compensation for a loss of rental income, 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's agent said she served the Tenant on May 12, 2011 with the Application and Notice of Hearing (the "hearing package") by registered mail. Section 90(a) of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Is the Landlord entitled to compensation for a loss of rental income?
2. Is the Landlord entitled to compensation for cleaning and repair expenses and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on February 1, 2008 and ended on April 30, 2011 when the Tenant moved out. Rent was \$874.00 per month payable in advance on the 1st day of each month which included the use of one parking stall. The Tenant also paid \$40.00 per month for the use of 2 additional parking stalls. The Tenant paid a security deposit of \$400.00 at the beginning of the tenancy.

The Parties completed a move in condition inspection report on February 5, 2008 and a move out condition inspection report on April 30, 2011. The Landlord's agent said that the carpets in the rental unit were installed new in 2003 and were clean and in good condition at the beginning of the tenancy. The Landlord's agent said that at the end of the tenancy, the carpets were extremely soiled with pet urine which had soaked through the underlay and into the cement floor and therefore they had to be replaced at a cost of \$1,614.76. The Landlord's agent also said that the Tenant painted the walls of the

rental unit dark colours but did not return them to their original (off white) colour at the end of the tenancy. The Landlord's agent said the walls also had an excessive number of nail holes. Consequently, the Landlord's agent said the Landlord incurred expenses of \$450.00 to repaint the rental unit.

The Landlord's agent further claimed that the Tenant did not leave the rental unit reasonably clean at the end of the tenancy. In particular, the Landlord's agent said the bathroom and all of its fixtures were dirty, the kitchen appliances and cupboards were dirty, the storage room floors were dirty and all of the light fixtures were dirty. Consequently, the Landlord's agent said the Landlord incurred expenses of \$216.00 to clean the rental unit.

The Landlord's agent said the Tenant gave written notice on April 6, 2011 that she was ending the tenancy on April 30, 2011. Despite the late notice, the Landlord's agent said the rental unit could not be re-rented for May 2011 as a result of the damaged and dirty condition in which it was left. The Landlord's agent said the rental unit was re-rented for June 2011.

Analysis

Section 37 of the Act says that at the end of a tenancy, a Tenant must leave a rental unit reasonably clean and undamaged except for reasonable wear and tear. RTB Policy Guideline #1 defines *reasonable wear and tear* as "natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion."

In the absence of any evidence from the Tenant to the contrary, I find that the Landlord has established a claim to recover compensation for carpets damaged by the Tenant. RTB Policy Guideline #37 at p. 16 says that the useful lifetime of a carpet is 10 years. Given that the carpet was 8 years old at the end of the tenancy, I find that the Landlord is entitled to be compensated for the depreciated cost of the carpeting or to **\$322.95** ($\$1,614.76 \times 20\% = \322.95).

RTB Policy Guideline #1 at p. 4 says that "a Tenant must pay for repairing walls where there has been an excessive number of nail holes or large nails, screws or tape that has caused wall damage." A Tenant is also responsible for the cost of returning a rental unit to its original condition before vacating (see p. 2). In the absence of any evidence from the Tenant to the contrary, I find that the Tenant left wall damage due to an excessive number of nail holes and failed to return the walls to their original neutral colour. Consequently, I find that the Landlord is entitled to recover painting expenses of **\$450.00**.

In the absence of any evidence from the Tenant to the contrary, I also find that the rental unit was not reasonably clean at the end of the tenancy and that as a result, the Landlord incurred general cleaning expenses of **\$171.38**. In the absence of any

evidence from the Tenant, I further find that the Landlord is entitled to recover its expenses of **\$5.00** to replace a laundry room key that the Tenant did not return at the end of the tenancy.

Section 45(1) of the Act states that a Tenant of a month-to-month tenancy must give a Landlord one full, calendar month's notice in writing that they are ending the tenancy. Consequently, the earliest the Tenant's written Notice dated April 6, 2011 could have taken effect would have been May 31, 2011. However 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 Landlord could not re-rent the rental unit for May 2011 due to the need to clean and make repairs. Consequently, I find that the Landlord is entitled to recover a loss of rental income for May 2011 in the amount of \$874.00. The Landlord also sought to recover \$40.00 for lost rental income for May 2011 with respect to the two additional parking spaces rented by the Tenant. The rental of these additional parking spaces is not covered by the Parties' tenancy agreement but is set out under a separate parking agreement which contains no provision for the payment of "lost rental income" or for giving notice of terminating a parking space. As this matter is not part of the parties' tenancy agreement, I find that this is not a matter that falls under s. 2 of the Act and it is dismissed without leave to reapply.

As the Landlord has been successful in this matter, I find that she is entitled pursuant to s. 72(1) of the Act to recover from the Tenant the \$50.00 filing fee for this proceeding. I Order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit of \$400.00 and accrued interest of \$5.49 in partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing as follows:

Loss of rental income:	\$874.00
Carpet replacement:	\$322.95
Painting:	\$450.00
General Cleaning:	\$171.38
Key:	\$5.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,873.33
Less: Security deposit:	(\$400.00)
Accrued interest:	<u>(\$5.49)</u>
Balance Owing:	\$1,467.84

Conclusion

A Monetary Order in the amount of **\$1,467.84** has been issued to the Landlord 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: August 22, 2011.

Residential Tenancy Branch