



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for a monetary order for unpaid rent and for money owed or compensation for damage or loss, an order to keep all or part of the security deposit, and to recover the filing fee for the Application.

The landlord's agents and the tenant appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions during the hearing.

Issue(s) to be Decided

Have the tenants breached the *Residential Tenancy Act* (the "Act") or tenancy agreement, entitling the landlord to an order for monetary relief?

Background and Evidence

This one year, fixed term tenancy began on September 15, 2010, and ended on May 31, 2011, when the tenants vacated the rental unit. Monthly rent was \$1,100.00 and the tenants paid a security deposit of \$550.00 on September 15, 2010.

Although the landlord's application requested the amount of \$1,364.32, which included a full month's rent for June, 2011, the landlord's agent testified that their revised monetary claim is in the amount of \$1,077.70, which includes a \$300.00 fee for breaking the lease early, in the form of liquidated damages, loss of rent for June 2011, in the amount of \$513.38, carpet cleaning for \$106.40, drape cleaning for \$100.80, general cleaning of \$57.12. The landlord has also requested the filing fee of \$50.00.

The landlord's relevant evidence included the tenancy agreement, the move out inspection report, and receipts for expenditures made.

The landlord's agent testified that the tenants ended the fixed term tenancy early, and moved out on May 31, 2011, instead of the ending date of September 30, 2011. The Landlord's agent submitted that they were able to re-rent the rental unit in mid June, and therefore suffered a loss of rent income for that month in the pro-rated amount of \$513.38.

The landlord's agent submitted that the tenants agreed to pay a fee of \$300.00 in the event they ended the tenancy early, as indicated in the tenancy agreement.

The landlord's agent submitted the tenants left the rental unit in a state which required 2 hours of general cleaning and did not clean the drapes or carpet upon vacating the rental unit.

In response, the tenant submitted that they were compelled to vacate the rental unit due to a leaking ceiling and excessive noise from an upper floor. The tenant also submitted that the rental unit was cleaned prior to them moving out.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the landlord to prove damage or loss.

Section 45 (2) of the Residential Tenancy Act requires a tenant to give notice to 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

Based on the testimony and evidence and a balance of probabilities, I find that the tenants failed to comply with the Act by providing insufficient notice to the landlord of their intent to vacate, which caused the landlord to incur a loss of rent for a portion of June 2011. I therefore find that the landlord has **established** a claim for **\$513.38** in lost rent for June 2011.

I find the landlord submitted sufficient testimony and documentary evidence that the tenants were required to pay liquidated damages for an early end to the tenancy in the amount of \$300.00 by virtue of their signature on the tenancy agreement. I therefore find the landlord has **established** their claim for the amount of **\$300.00**.

Residential Tenancy Branch Policy Guideline 1 states that a tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. I have no evidence from the tenants confirming that the carpet in the rental unit was cleaned periodically and I therefore find the landlord has **established** a monetary claim in the amount of **\$106.40**.

Policy Guideline 1 also states that a tenant should leave internal window coverings clean upon vacating. However I have no evidence or testimony before me which would confirm that the drapes were not clean when the tenants vacated. The landlord did not submit that the tenants were smokers or photographs proving that the drapes required cleaning. I therefore **dismiss** their claim for **\$100.80** for drape cleaning.

Under Policy Guideline 1, the tenants are required to maintain "reasonable health, cleanliness and sanitary standards." I cannot find on a balance of probabilities with the deficient evidence before me that the tenants left the rental unit in a condition that required additional cleaning and did not meet the standard. I find it logical that the landlord would provide additional minor cleaning at the end of a tenancy to have the rental unit in move in condition for the next tenant. I therefore **dismiss** their claim for additional cleaning in the amount of **\$57.12**.

As the landlord was primarily successful in their application, I **award** them the filing fee of **\$50.00**.

I therefore find the landlord has established a **monetary claim** of **\$969.78**, comprised of loss of rent for June 2011 in the amount of \$513.38, liquidated damages for \$300.00, carpet cleaning costs of \$106.40, and the filing fee of \$50.00.

I find the landlord made an application to retain the security deposit within fifteen days of receiving the tenants' forwarding address. Therefore, at the landlord's request, I **order** that the landlord retain the security deposit of \$550.00 in partial satisfaction of the claim and I **grant** the landlord an order under section 67 of the Act for the balance due of **\$419.78**.

I do not have authority under section 72 of the Act to allow the landlord to retain the gate card deposit and I therefore dismiss their request to do so. The landlord is directed to conform to the Act when dealing with the return of refundable deposits paid by the tenants.

I am enclosing a Monetary Order for \$419.78 with the landlord's Decision. This Order is a **legally binding, final Order**, and may be filed in the Provincial Court of British Columbia (Small Claims) should the tenants fail to comply with this Monetary Order.

Conclusion

The landlord is granted a Monetary Order of \$419.78.

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: September 26, 2011.

Residential Tenancy Branch