



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order for damages, to keep all or part of the security deposit, money owed or compensation for damage or loss and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Background and Evidence

This fixed term tenancy began April 1, 2011 with an end of tenancy date of March 31, 2011, monthly rent of \$1195.00 and the tenants paid a security deposit of \$597.50.

#5 of the signed residential tenancy agreement notes Liquidated Damages of \$575.00 to be paid by the tenants in the event the tenants end the fixed term tenancy before the end of the term set out in the agreement.

The landlord testified that the tenants gave notice on April 29, 2011 and vacated the rental unit on May 31, 2011. The landlord stated that the tenants agreed to a \$180.00 deduction for carpet cleaning, \$40.00 for yard maintenance, \$100.00 for wall repair and \$30.00 for cleaning the fireplace for a total deduction of \$350.00 from the tenant's security deposit.

The landlord is requesting to waive the \$180.00 cost for carpet cleaning however is claiming compensation for the \$1195.00 June 2011 rent, \$14.80 June 2011 hydro bill and \$170.00 for yard maintenance, wall repair and fireplace cleaning. The landlord stated that the rental unit was advertised in the local paper, on line and on their company web site but that the vacancy rate was high in the area and that was why it took a month to secure new tenants.

The tenant stated that he had called this office on 3 separate occasions to obtain information on the liquidated damages clause of the tenancy agreement and had been advised on each occasion that the tenants would not be responsible for any additional charges in relation to the tenancy once this amount was paid. The tenant stated that they had not clearly understood the terms of the tenancy agreement and that they had felt pressured to sign it.

The tenant stated that he did not agree with the \$100.00 for wall repair as the wall had been damaged due to a missing door stop. The landlord referred to the move-out inspection that was completed with the co-tenant present and that this particular cost for repairs was agreed to by the tenant.

The landlord in this application is seeking \$1379.80 compensation for damages, cleaning costs and loss.

Analysis

Based on the documentary evidence and testimony I find on a balance of probabilities that the tenant has not met the burden of proving that they have grounds for entitlement to a monetary order for damages, cleaning costs and loss.

The landlord suffered a loss of rental income when the tenants broke the fixed term lease and the move-out condition inspection report clearly notes the tenant agreeing to the costs for damages and cleaning costs.

Accordingly I find that the landlord is entitled to a monetary order for \$1379.80.

As the landlord has been successful in their application the landlord is entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the landlord has established a monetary claim for \$1379.80 in damages, cleaning costs and loss. The landlord is also entitled to recovery of the \$50.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$597.50 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$832.30**.

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: September 19, 2011.

Residential Tenancy Branch