



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for cleaning and repair expenses, for a loss of rental income, for liquidated damages and to recover the filing fee for this proceeding as well as to keep the Tenants' security deposit in partial payment of those amounts.

The Landlord's agent said on July 18, 2011 she served the Tenants with the Application and Notice of Hearing (the "hearing packages") by registered mail to a forwarding address provided by the Tenants. Section 90 of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later (even if they refuse to pick up that mail). Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing packages as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

Issue(s) to be Decided

1. Is the Landlord entitled to be compensated for cleaning and repair expenses and if so, how much?
2. Is the Landlord entitled to be compensated for a loss of rental income and if so, how much?
3. Is the Landlord entitled to liquidated damages?
4. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on April 1, 2010 as a one year fixed term tenancy which expired on March 31, 2011 and continued on a month-to-month basis thereafter. The tenancy ended on June 28, 2011 when the Tenants moved out. Rent was \$895.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$447.50 at the beginning of the tenancy. The Landlord's agent said a pet deposit of \$200.00 was required but was not paid.

The Landlord's agent said the Tenants gave written notice on June 14, 2011 that they were ending the tenancy on June 30, 2011. Consequently, the Landlord's agent said she gave the Tenants a written notice stating that the move out condition inspection was scheduled for June 29, 2011. The Landlord's agent said when she arrived at the rental

unit at the appointed time for the move out inspection however, the Tenants had already vacated and did not attend the inspection. The Landlord's agent wrote a few comments at the bottom of the move out inspection report and indicated in the margins what charges the Tenants would be responsible for. The portion of the report detailing the condition of the rental unit at the end of the tenancy was not completed.

The Landlord's agent said the Tenants smoked inside the rental unit during the tenancy and as a result the carpets and window coverings had to be cleaned. The Landlord's agent said the walls of the rental unit also had a smoke residue and many nail holes and as a result had to be repaired and repainted. The Landlord's agent claimed that the Tenants left a lot of garbage behind including a heavy chair that had to be removed. The Landlord's agent also claimed that the rental unit was not left reasonably clean and that 3 hours of cleaning was required for kitchen appliances and interior windows.

The Landlord's agent said the rental unit was re-rented for July 12, 2011 and as a result, she sought a loss of rental income for 11 days.

Analysis

There is a clause in the Parties' tenancy agreement which provides for the payment of \$300.00 if the Tenants ended the tenancy prior to March 31, 2011 (the end of the fixed term). As the Tenants did not end the fixed term tenancy early, I find that there are no grounds to award the Landlord liquidated damages and this part of the Landlord's claim is dismissed without leave to reapply.

Section 45(1) of the Act says 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. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that he or she 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.

I find that the earliest the Tenant's written notice given to the Landlord on June 14, 2011 could have taken effect would have been July 31, 2011. In the absence of any evidence from the Tenants to the contrary, I find that the Landlords took reasonable steps to re-rent the rental unit for July 12, 2011 and as a result, I find that the Landlord is entitled to be compensated for a loss of rental income for the period, July 1 – 11, 2011 in the pro-rated amount of **\$317.58**.

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.

Sections 23 and 35 of the Act say that a Landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the Tenant (within 7 to 15 days respectively). A condition inspection report is intended to serve as some objective evidence of whether the Tenant is responsible for damages to the rental unit during the tenancy or if she has left a rental unit unclean at the end of the tenancy. A Landlord must complete a condition inspection report even if the Tenant does not participate

I find that the Landlord's move out condition inspection report is lacking in that the only description of the condition of the rental unit at the end of the tenancy is a section for comments which states, "heavy chair left, walls very dirty, see photos, late notice, skipped." In the absence of any other evidence (such as photographs) of the condition of the rental unit at the end of the tenancy, I find that there is insufficient evidence to support the Landlord's claim for general cleaning expenses and it is dismissed without leave to reapply. I also find that there is insufficient evidence to conclude that the Tenants left garbage behind as alleged by the Landlord's agent and as a result, I award the Landlord **\$25.00** for the removal of a chair only. I also find that there is insufficient evidence to conclude that the walls had to be repaired due to nail holes as alleged by the Landlord's agent, however I am satisfied that the walls had to be repainted because they were dirty due to cigarette smoke residue and as a result I find that the Landlord is entitled to recover **\$250.00** for this part of its claim.

RTB Policy Guideline #1 (Responsibility for Residential Premises) states at p. 2 and 3 respectively that a tenant who smokes in a rental unit will be responsible for cleaning carpets and window coverings at the end of a tenancy. Consequently, I find that the Landlord is entitled to recover its expenses for carpet cleaning of **\$100.79** and for curtain and/or blind cleaning of **\$35.00**.

As the Landlord has been successful in this matter, it is also entitled pursuant to s. 72(1) of the Act to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenants' security deposit of \$447.50 in partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing as follows:

Loss of Rental Income:	\$317.58
Chair Removal:	\$25.00
Painting:	\$250.00
Carpet Cleaning:	\$100.79
Curtain/blind Cleaning:	\$35.00
Filing Fee:	<u>\$50.00</u>
Subtotal:	\$778.37
Less: Security Deposit:	(\$447.50)
Account Credit:	<u>(\$57.50)</u>
Balance Owing:	\$273.37

Conclusion

A Monetary Order in the amount of **\$273.37** has been issued to the Landlord and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, 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: October 19, 2011.

Residential Tenancy Branch