



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

At the hearing the male Agent for the Landlord withdrew the application for liquidated damages.

The male Agent for the Landlord stated that on July 21, 2011 copies of the Application for Dispute Resolution, Notice of Hearing, and evidence were sent to the Tenant, via registered mail, at the service address noted on the Application. The female Agent for the Landlord stated that the Tenant provided a partial forwarding address to the Landlord when she served her written notice to end the tenancy. The female Agent for the Landlord stated that the Landlord searched the street address on the internet and concluded the address was in Brentwood Bay, BC. The Landlord cited a Canada Post tracking number. At the hearing the male Agent for the Landlord checked the Canada Post website and noted that the package associated to the tracking number was delivered to the Tenant on August 08, 2011, and that the Tenant's signature was electronically recorded to confirm delivery. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89(1)(d) of the *Act*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for unpaid rent/loss of revenue; for compensation for damage to the rental unit; to retain all or part of the security deposit paid by the Tenant; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord submitted a copy of a tenancy agreement that shows the parties entered into a fixed term tenancy agreement that began on July 15, 2010 and was to continue until July 31, 2011, at which time it was to continue as a periodic tenancy. The agreement declares that the Tenant is required to pay rent of \$995.00 and parking of \$15.00 by the first day of each month; and that the Tenant paid a security deposit of \$497.50.

The Landlord submitted a written notice to end the tenancy, which is signed by the Tenant and dated June 22, 2011, in which the Tenant declared that she would be vacating the rental unit by the end of June. The Agent for the Landlord declared that the Tenant vacated the unit on July 01, 2011.

The Landlord is seeking compensation, in the amount of \$995.00, for loss of revenue experienced for the month of July of 2011. The male Agent for the Landlord stated that on June 23, 2011 the Landlord advertised the rental unit in the local newspaper and on the Landlord's website, but the rental unit has not yet been rented.

A condition inspection report was initiated at the beginning of this tenancy, at which time it was signed by the Tenant and an agent for the Landlord, a copy of which was submitted in evidence. This report was concluded on July 04, 2011, at which time the female Agent for the Landlord inspected the rental unit in the absence of the Tenant.

The male Agent for the Landlord stated that he believes the Tenant was verbally advised that the rental unit would be inspected at 1:00 p.m. on June 30, 2011. The female agent for the Landlord stated that she told the Tenant that the rental unit would be inspected at 1:00 p.m. on July 01, 2011. There is a note on the report that the Tenant did not show for the final inspection that was scheduled for June 30, 2011.

The female agent for the Landlord stated that she phoned the Tenant's mother on the morning of July 04, 2011 to inform her that the rental unit would be inspected at 1:00 p.m. on July 04, 2011. She stated that she posted a Notice of Final Inspection on the rental unit on the morning of July 04, 2011, which declared the unit would be inspected at 1:00 p.m. on that date.

The Landlord is seeking compensation, in the amount of \$100.74 for cleaning the carpet and \$98.00 for general cleaning. The female Agent for the Landlord stated that the condition inspection report completed at the end of the tenancy, which indicates cleaning was required, fairly represents the condition of the unit at the end of the tenancy.

The female Agent for the Landlord stated that she spent approximately ten hours cleaning the rental unit. The male Agent for the Landlord stated that the carpet was cleaned by a professional cleaning company, although no receipt was submitted in support of this claim.

Analysis

On the basis of the evidence presented by the Landlord and in the absence of evidence to the contrary, I find that the Landlord and the Tenant entered into a fixed term tenancy agreement, the fixed term of which began on July 15, 2010 and was to continue until July 31, 2011; that the Tenant was required to pay rent of \$995.00 by the first day of each month; that the Tenant paid a security deposit of \$497.50; that a condition inspection report was completed at the start of the tenancy; that the rental unit was vacated on July 01, 2011; and that a condition inspection report was completed on July 04, 2011, in the absence of the Tenant.

On the basis of the evidence presented by the Landlord and in the absence of evidence to the contrary, I find that the Tenant did not comply with section 45(2) of the *Act* when she ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. I therefore find that the Tenant must compensate the Landlord for any losses the Landlord experienced as a result of the Tenant's non-compliance with the *Act*, pursuant to section 67 of the *Act*. I find that the Landlord made a reasonable effort to rent the rental unit for July; that the Landlord was unable to rent the unit for July; and that the Tenant must therefore compensate the Landlord for the revenue lost during the month of July, which is \$995.00.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the evidence presented by the Landlord and in the absence of evidence to the contrary, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to leave the rental unit in reasonably clean condition. In reaching this conclusion I was heavily influenced by the testimony of the female Agent for the Landlord and the condition inspection report she completed on July 04, 2011. I therefore find that the Landlord is entitled to compensation for damages that flow from the Tenant's failure to comply with the *Act*.

On the basis of the evidence presented by the Landlord and in the absence of evidence to the contrary, I find that the female Agent for the Landlord spent ten hours cleaning the rental unit; that the Landlord is entitled to compensation for the ten hours spent cleaning the rental unit; and that the \$98.00 claimed for this time is reasonable. I therefore find the Landlord is entitled to compensation in this amount.

In these circumstances, I find that the Landlord failed to establish the true cost of cleaning the carpet. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Agent for the Landlord's

testimony that the Landlord paid \$110.74 to clean the carpet. I therefore dismiss the Landlord's claim for compensation for cleaning the carpet.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,143.00, which is comprised of \$995.00 in lost revenue; \$98.00 for cleaning; and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$497.50 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$645.50. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court 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 24, 2011.

Residential Tenancy Branch