

DECISION

Dispute Codes:

MNR; MND; MNDC; MNSD; FF

Introduction

This is the Landlord's application for a Monetary Order for unpaid rent, loss of revenue, and damage to the rental unit; to retain the security and pet damage deposits in partial satisfaction of its monetary claim; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

Preliminary Matters

At the outset of the Hearing, it was determined that the security deposit was extinguished in an earlier Decision dated November 22, 2011. The Tenant was provided a monetary award equal to double the security and pet damage deposits pursuant to the provisions of Section 38(6) of the Act. Therefore, the Landlord's application to retain the security and pet damage deposits is dismissed. The Hearing continued with respect to the remainder of the Landlord's claim.

Issues to be Decided

- Is the Landlord entitled to a monetary award for unpaid rent for July, 2011; loss of revenue for August, 2011; the cost of cleaning the rental unit and shampooing the carpet; the cost of painting the rental unit; and the cost of fumigating for fleas?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. The parties agreed that the monthly rent at the end of the tenancy was \$620.00, due the first day of each month and that the Tenant paid \$30.00 a month for parking fees.

The Landlord's agent gave the following testimony:

The Landlord's agent testified that the Tenant abandoned the rental unit on July 5, 2011, without paying rent for July and without providing any notice that he was ending the tenancy. The Landlord's agent testified that The Landlord advertized the rental unit for rent in October, 2011, and re-rented the rental unit effective December 15, 2011. When asked why the Landlord did not advertise for another Tenant immediately after determining that the Tenant had moved out, the Landlord's agent replied that the rental unit was not cleaned up right away and that it took some time to dispose of the Tenant's

junk. The Landlord seeks unpaid rent for July, 2011, and loss of revenue for the month of August, 2011.

The Landlord's agent testified that the Tenant did not clean the rental unit before abandoning it and that he left junk in the suite and on the balcony. The Landlord seeks \$150.00 for cleaning and removing junk (10 hours @ \$15.00 per hour).

The Landlord's agent testified that the tenancy agreement signed June 1, 2010, required the Tenant to shampoo the carpets and clean the window coverings at the end of the tenancy. The Landlord's agent testified that this was not done and the Landlord seeks \$75.00 for the cost of cleaning the carpets and \$25.00 for the cost of cleaning the window coverings.

The Landlord's agent testified that the rental unit needed to be fumigated for fleas at the end of the tenancy. The Landlord seeks \$50.00 for the cost of this treatment to the rental unit.

The Landlord's agent testified that the Tenant was a smoker and that the rental unit required painting at the end of the tenancy. She stated that the rental unit was freshly painted when the Tenant moved in on May 24, 2010. The Landlord seeks \$550.00 for the cost of painting the rental unit.

The Landlord's agent testified that the Tenant left metal shelving units on the balcony, which caused rust stains. The Landlord seeks \$40.00 for the cost of pressure washing the balcony.

The Tenant gave the following testimony:

The Tenant submitted that he wrote to the Landlord on May 27, 2011 and on June 7, 2011, complaining of a nightly noise from his neighbour's dogs barking. He stated that this was tantamount to a notice to end the tenancy because he wrote that he would move out if the barking continued. The Tenant testified that his lack of sleep was affecting his performance at work. He stated that the Landlord did nothing to provide him with quiet enjoyment, so he moved out of the rental unit at the end of June, 2011.

The Tenant testified that he attempted to return his keys to the Landlord's agent on July 1, 2011, but she was busy. He stated that he returned his keys on July 4, 2011.

The Tenant agreed that he had left behind some items, but that they were empty boxes, pieces of paper and empty plastic bags which would not take the Landlord too much effort to get rid of. He stated that he cleaned the fridge and stove and wiped down the cupboards. He stated that he shampooed the carpet one month prior to moving out.

The Tenant stated that his dog did not have fleas and that there was no requirement in the tenancy agreement for him to treat the rental unit against fleas at the end of the tenancy. The Tenant testified that he did not clean the window coverings at the end of the tenancy.

The Tenant disputed that the rental unit was freshly painted at the beginning of his tenancy. He stated that he was a smoker, but there was no provision in the tenancy agreement against smoking in the rental unit. He stated that the deck was cleaner when he left than it was when he moved in. The Tenant stated that if the Landlord had an issue with damages, it should have filed its claim at the same time he filed his claim against the security deposit.

The Landlord's agent gave the following reply

The Landlord's agent stated that she did respond to the Tenant's letters of May 27 and June 7, 2011. The Landlord's agent testified that she gave the Tenant's neighbour a Notice to End Tenancy for Cause, and had a Hearing to evict the neighbour on June 30, 2011. The Landlord's agent testified that the Tenant wrote a letter in his neighbour's defense stating that the dogs were not bothering him as much and the noise level was getting better.

Analysis

The Tenant questioned the Landlord's slowness in applying for damages. The Landlord's right to claim against the security and pet damage deposit was extinguished, but the Landlord retains the right to claim for damages under Section 67 of the Act for up to two years after the end of the tenancy.

Section 45(3) of the Act states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice. This notice must comply with Section 52 of the Act, which states that the letter must give an effective date of the end of the tenancy.

The Tenant provided a copy of his letters to the Landlord dated May 27 and June 7, 2011. Neither of the letters specifically indicates that the Tenant is intending to end the tenancy on a certain date if the Landlord does not provide him with quiet enjoyment of the rental unit.

The letter of May 27, 2011, states, in part, "I am a day time worker and the loss of sleep is effecting my job. I would like this problem resolved, some how. Please do something effective." [reproduced as written]

The letter of June 7, 2011, states, in part, "I am at my wits end, from lack of sleep. The only resolve seems to be, that I look for a quitter environment. This could be in the apt. bloc or elsewhere. Conditions are such that I feel that I am being evicted. I do not wish to move but a working man needs his sleep. Please get back to me, this problem must be resolved soon." [reproduced as written]

The Tenant did not deny that he had written a letter in support of his neighbour for use at the Landlord's Hearing to have the neighbour evicted. Based on the testimony of both parties, I find that the Tenant did not end the tenancy in accordance with the provisions of the Act, did not provide effective notice to end the tenancy, and that the Landlord is entitled to a monetary award for unpaid rent for the month of July, 2011, in the amount of **\$620.00**. I find that the Landlord is also entitled to unpaid parking fees in the amount of **\$30.00** for the month of July, 2011.

I find that the Landlord did not provide sufficient evidence that it attempted to mitigate its loss of revenue for the month of August, 2011, and therefore this portion of the Landlord's claim is dismissed. There was insufficient evidence that the Landlord could not have made the rental unit ready for occupancy within days after the Tenant moved out. The photographic evidence provided by the Landlord, and the Landlord's evidence that it took only 15 hours to clean the apartment and dispose of the junk, indicates that the Landlord did not need more than a few days to make the apartment tenant-ready again. The Landlord's agent testified that the rental unit was not advertised for rent until October, 2011, and re-rented in December, 2011. Therefore the Landlord's application for loss of revenue for the month of August, 2011, is dismissed.

Based on the testimony of both parties and the photographic evidence provided, I am satisfied that the Tenant did not clean the window coverings or shampoo the carpet at the end of the tenancy as required in the tenancy agreement and the Residential Tenancy Policy Guidelines. Therefore, I allow the Landlord's claim in the amount of **\$100.00** for the cost of cleaning the drapes and the carpets.

The Tenant admitted to leaving some of his belongings and some garbage behind, including: empty boxes; empty bags, a broken table; fishing rod; an antennae; and shelving units. The photographs provided by the Landlord indicate that there are pieces of paper and other debris on the carpet. I am satisfied that the Tenant did not leave the rental unit in a reasonable state of cleanliness as required under Section 37 of the Act. Therefore, I allow the Landlord's claim in the amount of **\$150.00** for cleaning and dumping fees.

I find that the Landlord did not provide sufficient evidence that the rental unit required treatment for fleas and this portion of its application is dismissed. Likewise, I find that the Landlord provided insufficient evidence to support its claim of \$550.00 for painting the rental unit or \$40.00 for the cost of pressure washing the balcony. This portion of the Landlord's claim is also dismissed.

The Landlord has been partially successful in its application and I find that it is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

I hereby provide the Landlord a Monetary Order against the Tenant, calculated as follows:

Unpaid rent and parking fees for July, 2011	\$650.00
Cleaning costs and dump fees	\$250.00
Recovery of the filing fee	<u>\$50.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD	\$950.00

Conclusion

I hereby grant the Landlord a Monetary Order in the amount of **\$950.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: January 16, 2012.

Residential Tenancy Branch