



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

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 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.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present oral evidence, to ask questions, and to make submissions.

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 and the Tenant agree that this tenancy began on November 10, 2009; that during the latter part of the tenancy the Tenant was paying rent of \$760.00, which included parking; that rent was due by the first day of each month; that the Tenant paid a security deposit of \$375.00; that the Tenant returned the keys to the rental unit and vacated it on October 25, 2011; and that the Tenant gave no notice of his intent to vacate the rental unit.

The Landlord is seeking compensation, in the amount of \$144.00 for general cleaning in the rental unit; \$66.08 for cleaning the carpets; \$45.00 for cleaning the drapes; \$170.00 for repairing damages to the carpet; \$75.00 for repairing damage to the refrigerator; and \$3.00 for replacing one key that was not returned at the end of the tenancy. The Tenant agreed that the Landlord is entitled to compensation in these amounts.

The Landlord is seeking compensation, in the amount of \$470.00, for painting the ceiling in the rental unit. The Agent for the Landlord stated that the Tenant smoked in the rental unit and that the ceilings needed painting as a result of the smoking. The

Tenant argued that staining on a ceiling should be considered normal wear and tear in a rental unit where smoking is permitted. The Landlord and the Tenant agree that smoking was permitted in the rental unit.

The Landlord is seeking compensation, in the amount of \$100.00, for replacing a set of bedroom drapes that were damaged during the tenancy. The Agent for the Landlord stated that the drapes were replaced with drapes the Landlord had in stock, and therefore a receipt for replacing the drapes was not submitted. The Tenant agrees that he damaged the drapes in the bedroom but he believes they are old and that the Landlord should only be entitled to compensation in the amount of \$50.00.

The Landlord is seeking compensation, in the amount of \$760.00, for loss of revenue experienced during the month of November. The Agent for the Landlord stated that the Landlord did not advertise the rental unit until the first week of November, as the rental unit needed to be cleaned and painted, and that it was not re-rented until February 01, 2011. The Landlord contends that it should be entitled to compensation for loss of revenue as the Tenant did not give proper notice of his intent to vacate, which prevented them from advertising the unit at the start of October.

The Landlord is seeking compensation, in the amount of \$25.00, which is a fee for not paying rent when it was due on November 01, 2011.

Analysis

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.

As the Tenant agreed that the Landlord is entitled to compensation, in the amount of \$144.00 for general cleaning in the rental unit; \$66.08 for cleaning the carpets; \$45.00 for cleaning the drapes; \$170.00 for repairing damages to the carpet; \$75.00 for repairing damage to the refrigerator; and \$3.00 for replacing one key that was not returned at the end of the tenancy, I find that the Landlord is entitled to compensation for these expenses.

As the Tenant agreed that he damaged the bedroom drapes, I find that he is obligated to compensate the Landlord for the cost of replacing the drapes. In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of replacing the drapes. In these circumstances, I find that the Landlord failed to establish the true cost of replacing the drapes, as no documentary evidence was submitted to support the claim of \$100.00. As the Tenant has agreed to pay the Landlord \$50.00 for replacing the drapes, I find that the Landlord is entitled to compensation of \$50.00.

Section 37(2)(a) of the *Residential Tenancy Act (Act)* stipulates that a tenant must leave a rental unit reasonably clean and undamaged, except for reasonable wear and tear, at the end of a tenancy. I find that some discoloration of a ceiling should be considered reasonable wear and tear. In the absence of evidence, such as a photograph, that would cause me to conclude that the discoloration to the ceiling exceeds normal wear and tear, I find that the Tenant is not obligated to repaint the ceiling in the rental unit. In these circumstances I specifically note that the one photograph of the ceiling submitted in evidence shows no sign of discoloration on the ceiling. I therefore dismiss the Landlord's claim for painting the ceiling.

I find that the Tenant failed to comply with section 45 of the *Act* when he failed to provide the Landlord with written or verbal notice of his intent to end the tenancy on October 25, 2011. As the Landlord was not aware the tenancy was ending until October 25, 2011 I find that it was extremely difficult for the Landlord to find new tenants for November 01, 2011. I find that the lack of notice contributed to a loss of rental revenue for the month of November and that the Landlord made reasonable efforts to minimize their losses by cleaning and advertising the unit in a timely manner. On this basis, I find that the Tenant must compensate the Landlord for the loss of revenue that resulted from the absence of notice, in the amount of \$760.00.

As this tenancy ended on October 25, 2011, pursuant to section 44(1)(d) of the *Act*, I find that the Tenant was not obligated to pay rent on November 01, 2011. I therefore find that Tenant is not required to pay a late fee for not paying rent for November.

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 \$1,363.08, which is comprised of \$760.00 in compensation for lost revenue; \$553.08 in damages; and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I authorize the Landlord to retain the Tenant's security deposit of \$375.00 in partial satisfaction of this monetary claim, pursuant to section 72(2) of the *Act*.

Based on these determinations I grant the Landlord a monetary Order for the amount \$988.08. 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: February 02, 2012.

Residential Tenancy Branch