



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for damage to the unit, site or property and to recover the filing fee for this proceeding.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by personal delivery on May 2, 2012. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

During the conference call the Landlord said he made a mistake in filling out the application as he did not request to retain the Tenants' security deposit for unpaid rent or damages. The Landlord requested the application be amended to include retaining the security deposit of \$650.00. I accept the Landlord's request to amend the application to include a request to retain the Tenants' security deposit of \$650.00 for unpaid rent or damages.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Are there damages to the unit and if so how much?
4. Is the Landlord entitled to compensation for the damage and if so how much?
5. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on December 15, 2010 as a fixed term tenancy with an expiry date of December 15, 2011. Rent was \$1,300.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$650.00 on December 2, 2010. The Tenant said they moved out of the rental unit on September 1, 2011 with no notice to the Landlord. The Landlord said the Tenants abandon the property and left it in an unclean state and with considerable damage.

The Landlord said that the Tenant did not pay rent of \$1,300.00 for each month of July and August, 2011 and the property was empty in September and October, 2011. The Landlord said he did not have any proof that the Tenants did not pay the rent for July and August, 2012. The Landlord continued to say new tenants moved in on November 1, 2011.

As well the Landlord said the unit needed cleaning and he tried to clean the carpets, but he was unsuccessful and so the carpets had to be replaced throughout the unit. The Landlord included a cleaning receipt for the unit and carpets of \$400.00 and receipts for the replacement carpets of \$822.98 and \$38.49.

The Landlord said his claim is for 2 months of unpaid rent in the amount of \$2,600.00, \$400.00 for cleaning the unit and \$861.47 for the cost of replacing the carpets.

The Tenant said they paid the rent for July on July 5, 2011 and for August on August 5, 2011 in person at the Landlord's house in cash and the Landlord did not give them a receipt on either occasion. The Tenant said she understood that they signed a fixed term tenancy agreement, but she thought the tenancy agreement would work on a month to month basis. The Tenant said she understood that they are responsible for the rent for the rent for September and October, 2011 in the amount of \$2,600.00 because they signed a tenancy agreement that ended on December 15, 2011 and that new tenants did not move in until November 1, 2011.

The Tenant continued to say that the move in condition inspection report indicates the carpets are in fair condition and an odour issue was noted for some of the carpets. As well the Tenant said the carpets were old and needed replacement when they moved in; therefore the Tenant said she does not believe they are responsible for the cost of replacing the carpets. Further the Tenant said she cleaned the unit before leaving and so she does not think they are responsible for the cleaning costs of \$400.00 that the Landlord is claiming especially since part of that claim is for carpet cleaning.

The Landlord said he is also seeking to recover the filing fee for this proceeding of \$50.00.

Analysis

Section 44 (2) (b) of the Act says a tenant may end a fixed term tenancy not earlier than the date specific in the tenancy agreement as the end of the tenancy

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

There was much contradictory testimony given whether the July and August, 2011 rent was paid or not paid. The Tenant said they paid the rent in cash and no receipts were given to them and the Landlord said the Tenants did not pay the rent. Neither of the parties had any evidence to corroborate their testimony so it is a situation of one parties word against the other parties word. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. Consequently I dismiss the Landlord's claim for unpaid rent for July and August, 2011 without leave to reapply. With respect to the lost rent for September and October, 2011 in the amount of \$1,300.00 for each month which resulted from the Tenants moving out before the end of the fixed term tenancy agreement that stated the end of the Tenancy was December 15, 2011. As well the Landlord said the unit was rent to new tenants on November 1st, 2011. Consequently, I award the Landlord a total of \$2,600.00 for the lost rent for September, 2011 and for October, 2011 as a result of the fixed term tenancy agreement.

With respect to the cleaning and replacement of the carpets in the rental unit I accept the Tenant's testimony and the evidence in the move in condition inspections report dated December 11, 2010 that says the carpets were older and in only fair condition at the start of the tenancy; therefore I dismiss the Landlords claim for the cost of replacing the carpets and \$200.00 of the cleaning costs which I deem relate to the carpet cleaning before the carpets were replaced.

Further I accept the Landlords testimony that the unit needed cleaning at the end of the tenancy and I award the Landlord part of the cleaning costs which I deem to relate to cleaning the unit of \$200.00.

As the Landlord has been partially successful in this matter, the Landlord is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit in payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Unpaid rent:	\$ 2,600.00
	Cleaning costs	\$ 200.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$2,850.00
Less:	Security Deposit	\$ 650.00
	Subtotal:	\$ 650.00
	Balance Owing	\$ 2,200.00

Conclusion

A Monetary Order in the amount of \$2,200.00 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.

Residential Tenancy Branch