



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"), seeking a monetary order for unpaid rent and for damage to the rental unit and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order and to recover the filing fee?

Background and Evidence

This 8 month, fixed term tenancy began on September 1, 2011, ended when the tenants vacated the rental unit on April 30, 2012, monthly rent was \$875.00 and the tenants paid a security deposit of \$437.50 at the beginning of the tenancy.

The landlord's monetary claim is \$1946.20, comprised of loss of revenue for May 2012, in the amount of \$875.00, cleaning for \$80.00, repairs for \$778.40 and carpet cleaning for \$212.80.

The landlord's relevant evidence included the tenancy agreement, condition inspection report, a routine inspection report, photos and invoices.

Loss of rent revenue-The landlord pointed to the tenancy agreement, which stated that at the end of the fixed term, that being April 30, 2012, the tenancy automatically converted to a month to month tenancy.

The landlord stated that the tenants vacated the rental unit at the end of April as they believed the tenancy ended on that date. The landlord stated that the insufficient notice of vacancy by the tenants caused them to lose revenue for the month of May 2012.

In response, tenant BR stated that they dropped off a letter to the landlord at the end of March, which was their notice of intent to vacate at the end of April. No copy of the letter was submitted into evidence.

Cleaning-The landlord stated that the condition of the rental unit with the presence of mould caused the landlord to incur a cleaning bill to remove the mould.

Repair of damage caused by mould-The landlord stated that the tenants caused an excessive amount of mould to grow in the rental unit due to moisture accumulation. The landlord submitted that their repairman attributed the mould growth to lifestyle and not construction.

The landlord submitted that the mould growth caused damage to the windows, framing and surrounding drywall.

When questioned, the landlord stated that the windows were at least 25 years old and that the frames were aluminum.

In response, the tenants submitted upon moving in, they noticed that mould immediately began to grow, which was brought to the landlord's attention. The tenants further stated that the windows were old and never allowed for proper ventilation.

The tenants submitted that despite having informed the landlord of the mould problem, nothing was ever done to address the issue.

Carpet cleaning-The landlord stated the tenants did not have the carpets professionally cleaned at the end of the tenancy, as required by the tenancy agreement. As well, the state of the carpet required additional cleaning.

The tenants did not provide a clear denial of the state of the carpet and did not contend that the carpet was cleaned.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement,

third, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **last**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the landlord to prove damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

Loss of rent revenue-Under the Act, unless the tenancy agreement provides that the tenancy will end at the end of the fixed term and the tenants are required to vacate, the fixed term tenancy converts to a month to month tenancy. In this case the tenancy agreement specifically provides that the tenancy was to continue on a month to month basis at the conclusion of the fixed term.

As such the tenants were required to give one clear month's notice to end the tenancy and failed to do so. I do not accept that the tenants provided written notice in March 2012, due to the lack of evidence.

I am satisfied that the tenants provided insufficient notice under the Act to vacate, causing the landlord to incur a loss of rent for May 2012. Therefore I find the Landlord has established a monetary claim in the amount of \$875.00.

Cleaning-I accept the evidence of the landlord that the tenants did not adequately clean the window tracks and find that the landlord has established a monetary claim for \$80.00.

Repair of damage caused by mould-I have reviewed the photographs supplied by the landlord and I am not convinced the tenants caused the damage as depicted in the photos. For instance, some damage appears to be too extensive and long standing to have started during this short term tenancy. I also find that the landlord provided insufficient evidence that the mould was surface and not structurally related.

I therefore find the landlord submitted insufficient evidence that the tenants were responsible for the mould damage and I dismiss their claim for \$778.40.

Even had I not dismissed the landlord's claim due to insufficient evidence, I would still make the decision to dismiss this claim due to the age of the windows. Residential Tenancy Policy Guideline 40 provides that the useful life of windows is 15 years and aluminum frames is 20 years old and the landlord confirmed that the windows and frames were at least 25 years old. I therefore find the windows and frames have been fully depreciated.

Carpet cleaning-I accept that the tenants were required to have the carpet professionally cleaned as stated in their duly executed tenancy agreement and failed to do so. I therefore find the landlord has established a monetary claim of \$212.80.

Conclusion

I find that the landlord has established a total monetary claim of \$1217.80, comprised of loss of rent revenue for May 2012, in the amount of \$875.00, cleaning for \$80.00, carpet cleaning for \$212.80 and the filing fee of \$50.00.

I grant the landlord a monetary order for \$1217.80 and enclose the monetary order with the landlord's Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement should the tenant fail to comply with this monetary order.

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: July 16, 2012.

Residential Tenancy Branch