



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application filed by the landlords seeking:

1. A monetary Order in the sum of \$6,936.40;
2. An Order allowing the landlord to retain the security deposit; and
3. Recovery of the filing fee paid for this application.

Both parties appeared at the hearing of this matter and gave evidence under oath.

Issue(s) to be Decided

Have the landlords met the burden of proving their claims?

Background and Evidence

The parties agree that this tenancy began in June 2009 and ended on October 31, 2013. The landlord testified that the tenancy was conducted by way of several fixed term leases that ended at which time a new fixed term and new lease was signed. The final lease which is the subject of these proceedings submitted in evidence was signed by the parties on July 1, 2012 for a fixed term of one year ending June 30, 2012 at which time the tenancy would end and the tenant would move out. Rent was fixed at \$1,115.00 per month. The Agreement notes that the security deposit was "N/A" however the parties agree that the tenant did pay a security deposit at the start of this tenancy of \$575.00 being one half of what was then the rent of \$1,150.00.

Condition Inspection Reports were not submitted into evidence. The landlord testified that a move-out report was not prepared because the tenant did not show up for the move-out inspection. The landlord testified that she did not serve a Notice of Final Opportunity for Inspection on the tenant in this regard.

The landlord makes the following claims:

3 months rent @ \$1,115.00 per month due to breaking lease	\$3,345.00
3 x \$75.00 for late payment of 3 months' rent set out above	225.00
Light Bulbs	10.00
1 bedroom blind and mat to cover stains	77.88
Light bulb for vanity	18.18
Plumbing supplies for plumber to fixed plugged toilet	34.83
Property manager to secure a new tenant and show the home	875.00
Both landlords cleaning rental unit for 5 hours @ \$20.00 per person	200.00
Maid service for additional cleaning	436.80
Plumber to repair toilet as landlord's attempts were unsuccessful	60.00
Screws for taps	19.90
Rekey as tenant did not return the keys	45.00
Cost of 2 keys	15.00
Carpets approximate tenant's share	1,500.00
Bank Service Charges	7.50
Total	\$6,870.09

The landlord testified that the rental unit was not in a fit condition to be re-rented when this tenant vacated because the tenant left the rental unit in terrible condition. The landlord submitted a CD of photographs with respect to the condition of the rental unit at move-out.

The landlords are seeking three months of rent, late rental payment fees in accordance with the fixed term tenancy agreement and the cost of the property manager. The landlords say they live an 8 hour round trip from the rental unit and it was necessary to hire a property manager to look after the property and show the rental unit in an attempt to secure a new tenant. The landlords submit that if the tenant had not ended the tenancy prior to its fixed term they would not have had to hire a property manager. The landlords say the tenant agreed to pay half of the property manager charges because she did not have time to show the unit herself in an attempt to find a new tenant. The landlords testified that to date they have been unable to re-rent the premises even though they have hired a property manager to do so and several advertisements have been placed. The landlords testified that they are seeking the same amount of monthly rent as paid by the tenant. The landlords submit that they have not lowered the asking rent because they have been advised by their property manager that the rent they are seeking is fair.

The landlords say they spent funds to repair the rental unit such as to unplug the toilet and replace leaky taps. Further the landlords say they spent many hours cleaning the rental unit themselves in addition to hiring a professional maid service to clean.

With respect to new carpet at \$1,500.00 the landlords have not installed the new carpet yet but estimate this to be the cost. The landlords say the tenant pressured them to allow her to have a pet and the only way they would allow her to have a pet is if the tenant agreed to pay for new carpets at the end of the tenancy. The landlord submitted that pets urinate on the carpets and this goes through the underlay and the carpets would have to be replaced.

The tenant testified that she should not have signed the final lease because her life was changing and she was not sure if she could stay one year but she confirms that she did sign the lease. The tenant says the landlords were very mean to her during her tenancy.

The tenant disagrees with the landlords' claims. The tenant says she gave notice on September 21, 2012 that she intended to vacate on October 31, 2012. The tenant says she hired Molly Maid to do a move-out cleaning and she hired a carpet cleaning service to shampoo carpets. The tenant submitted invoices for these items which were paid for by the tenant's husband. The tenant testified that that Molly Maid sent 2 woman who spent 2.5 hours cleaning the rental unit and that it was "...sparkling..." when she vacated. The tenant says she does not know where the photographs shown on the CD submitted by the landlords came from but says these photographs do not depict the rental unit as she left it.

The tenant says that the landlords harassed her about the cleaning in the rental unit and the costs of hiring a property manager such that she eventually agreed to allow them to retain her security deposit of \$575.00. The tenant agrees that in exchange for a pet she agreed to pay 50% of reasonable costs of replacing the carpets. The tenant submitted that when she moved in the flooring needed replacing and she should never have agreed to this term.

The tenant submits that when they moved into the rental unit her marriage broke up, later her father was diagnosed with cancer and passed away. The tenant wanted a pet in the home to bring some cheer into their lives. The tenant says the puppy never damaged the carpet as he was well trained. The tenant says she was never supplied with a move-in inspection report which would have shown that the rental unit had stained carpet, marked and scratched linoleum, grooved door frames that had been painted over and a big mark on the kitchen counters. The tenant says there were also

holes in the walls which had been covered with pictures which the landlords said were a "...housewarming..." gift to the tenant at move in.

The tenant says that around move-out she became very ill but agreed to meet with the female landlord on November 3, 2012 to do a move-out inspection. The tenant testified that she attended just after 8 pm but the landlord was not there. The tenant submitted a letter from a neighbour who she says saw her attend.

Analysis

The landlords have brought this claim and therefore they bear the burden of proving this claim.

With respect to their claim for rental loss, where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. However, the landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect. The duty to minimize loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation. However, the Legislation does require the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation.

If the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been saved. In this regard I am not satisfied that the landlords made all efforts to re-rent the premises, I have very little evidence of the steps taken to secure a new tenant and the landlords have admitted that despite being unable to re-rent the premises they have still refused to seek a lower rent. They say they have been advised that the rent they are seeking is fair market value however if a rental unit sits empty for months on end at a certain rental asking price it seems prudent to lower the asking rent. With respect to advertisements, while receipts have been provided for advertisements these receipts were supplied by the tenant who was attempting to re-rent the premises herself. The evidence of advertisements submitted by the landlords show advertisements in October, November and December in Kijiji, Craigslist and what appears to be a local publication. Overall I am not satisfied that the landlords took all

reasonable steps as quickly and as frequently as they might have done in order to secure a new tenant and I will therefore not allow their claim for 3 months rental (November, December and January). However, I will allow them to recover rental loss for November and December, the months in which I am satisfied that they took steps to secure a new tenant.

With respect to the landlords' claim for \$225.00 for three late rental payment fees at \$75.00 each, while this clause is set out in the Addendum to the tenancy agreement, a late fee of \$75.00 exceeds the fee allowable under the Act. Further as the rent payable was under dispute I find these late fees to be inappropriate in the circumstances and I dismiss this claim.

With respect to the condition of the rental unit at move-out, a Landlord is responsible for ensuring that rental units and property, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act*. The tenant has supplied proof that I accept that the rental unit was cleaned by a professional cleaner at move out. However, the landlords have testified that they too spent 5 hours each cleaning the rental unit and that they also hired a cleaning service at a cost of almost \$500.00. The landlords have submitted a CD of photographs which they say depict the condition of the rental unit however the tenant disputes those photographs. I have viewed the 162 "before and after" photographs contained on this CD and I do not find that they depict a rental unit that requires the extraordinary amount of cleaning that the landlords claim. By way of an example of what these photographs depict, they show dust, small amounts of debris where appliances may have been, a dirty oven, a dirty oven hood fan, a toilet seat that could be cleaner, a stainless steel sink that had yellowed over time, some plastic containers left in a drawer and some black around window sills. As set out above, the tenant is not responsible for bringing the rental unit up to a higher standard than that set out in the *Residential Tenancy Act*. Based on the photographs supplied by the landlords to support their claim for cleaning costs I find that their claim is completely unreasonable and it is therefore dismissed.

I will allow for the costs of replacing bulbs. I will also allow for the costs of rekeying the locks and the new keys because the tenant should have returned the keys to the landlords.

I dismiss the landlords' claims for plumbing repairs as I find they have not proven that the tenant caused the damages claimed and it is equally likely that these are maintenance matters which are the responsibility of the landlords.

I decline the landlords claim for the costs incurred to hire a property manager to manage the rental property. If the landlords choose to be in the business of being landlords of a property that is an 8 hour round trip from their own home and therefore difficult for them to manage that is their choice. However, the tenant should not have to bear the costs of that choice.

With respect to the landlords claim that the tenant made a promise to pay for carpeting in exchange for having a pet I find this agreement contradicts the Act and agreements that contradict the Act are void. The landlords were allowed to charge a pet deposit of one half the rent but they chose not to do so. A deposit or a commitment to pay a sum prior to the end of the tenancy is not acceptable and I find that the landlords have failed to bring sufficient evidence to show that the carpets were indeed damaged by the tenant and/or her pet such that they had to be replaced or that they were in fact replaced.

I find that the landlords have failed to show that the tenant damaged the blinds or that she should be held responsible for the purchase of a mat. These claims are also dismissed.

The landlords have shown that the tenant's cheque was returned by her bank I will therefore allow for these services charges.

As the landlords have achieved some success in this matter, I will allow them to recover some of the filing fee they have paid for this application.

In conclusion I will allow the following sums:

2 months rent @ \$1,115.00 per month due to breaking lease	\$2,230.00
3 x \$75.00 for late payment of 3 months' rent set out above	0.00
Light Bulbs	10.00
1 bedroom blind and mat to cover stains	0.00
Light bulb for vanity	18.18
Plumbing supplies for plumber to fixed plugged toilet	0.00
Property manager to secure a new tenant and show the home	0.00
Both landlords cleaning rental unit for 5 hours @ \$20.00 per person	0.00
Maid service for additional cleaning	0.00
Plumber to repair toilet as landlord's attempts were unsuccessful	0.00
Screws for taps	0.00
Rekey as tenant did not return the keys	45.00
Cost of 2 keys	15.00
Carpets approximate tenant's share	0.00
Bank Service Charges	7.50
Total	\$2,325.68
Less security deposit held by the landlords	-575.00
Partial recovery of filing fee	25.00
Total payable by tenant to landlords	\$1,775.68

Conclusion

The landlords are provided with an Order in the above terms. This is a final and binding Order enforceable in the Provincial 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*.

Dated: February 28, 2013

Residential Tenancy Branch

