



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD and FF

Introduction

By application of March 8, 2013, the landlord sought a monetary award of \$1,250 for unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the security and pet damage deposits in set off against the balance owed. The landlord amended the application on May 21, 2013 to add \$2,139.77 claims in damage to the rental unit, repainting and cleaning.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as requested and in what amount?.

Background and Evidence

This tenancy began on September 15, 2009 and ended on or about March 1, 2013. Rent was \$1,200 per month and the landlord holds security and pet damage deposits of \$600 and \$400 respectively, both paid on August 31, 2009.

During the hearing, the parties concurred that the property manager had advised the tenants in February 2013 that the landlord was listing the property for sale. The tenants replied to the property manager on February 24, 2013 stating that, having previously been tenants in a property listed for sale, they were loathe to repeat the experience. They advised that they had found a new rental unit into which they would be moving on March 1, 2013.

The tenants concurred that they had not paid the rent for March 2013.

As to the landlord's additional claims, with respect to a claim for \$1,800 for repainting, the property manager stated that the rental building had been new in 2004 and had not been painted since. He was advised that standard depreciation tables placed the useful life of interior paint at four years and would have been fully depreciated.

With respect to the claim for cleaning, it was noted that the invoice submitted into evidence was dated March 28, 2013, after the painting had been done, therefore making it difficult to apportion it between what might have been necessitated by the painting and work left undone by the tenants.

The tenants strongly contested that claim and the claim for repairs, noting that a person representing the property manager had advised them after completing the move-out condition inspection report that no claims in damages were anticipated. The tenants signed the report on that understanding.

In consideration of those arguments, the property manager withdrew the claims for painting, cleaning and repairs.

Analysis

Section 45 of the *Act* requires that tenants' Notice to End Tenancy must be served on a day before the rent due date of the month in which they wish to end the tenancy. Therefore, I find that the tenants were obliged to pay the rent for March 2013 and that the landlord is now entitled to a Monetary Order for the unpaid rent.

It is somewhat ironic that, if the tenants had awaited a Notice to End Tenancy for landlord use, they would have qualified for compensation in the equivalent of one month's rent and could have left the tenancy on 10-days notice. However, as no such landlord notice had been served, the tenants were bound by section 45 of the *Act*.

In addition, as the application has succeeded on the merits of the claim for unpaid rent, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenants.

As authorized under section 72 of the *Act*, I further find that the landlord may retain the security and pet damage deposits in set off against the unpaid rent.

Thus, I find that the tenants owe to the landlord an amount calculated as follows:

Rent for March 2013	\$1,200.00
Filing fee	<u>50.00</u>
Sub total	\$1,250.00
Less retained security deposit (no interest due)	- 600.00
Less retained pet damage deposit (no interest due)	- <u>400.00</u>
TOTAL	\$ 250.00

Conclusion

In addition to authorization to retain the tenant security and pet damage deposits in set off, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for \$250 for service on the tenants.

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: May 30, 2013

Residential Tenancy Branch

