



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

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

1. A monetary Order,
2. An Order to be allowed to retain the security deposit; and
3. Recovery of the filing fee paid for this application.

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

Issue(s) to be Decided

Are the landlords entitled to a monetary order, to retain the security deposit and recover the filing fee paid for this application?

Background and Evidence

This tenancy began on August 1, 2010 and ended January 31, 2013 following a notice to end tenancy given by the tenant on December 31, 2012. Rent throughout the tenancy was \$1,600.00 per month and the tenant paid a security deposit of \$800.00.

The landlords say that the tenant left the property damaged. Agent for the landlords testified that the blinds were dirty and damaged, there were holes in the doors, there was candle wax from one end of the house to the other, there was a rotting aquarium left behind as well as furniture that had to be taken to the dump along with garbage that was piled in the yard.

The landlords say the rental unit was completely repainted at move in but during the tenancy the tenant repainted the home without their permission in multiple colours including black. The landlords say baseboards were removed inside the house and

there were hundreds of cigarette butts and cat feces in the home in every possible location including in the venting and cupboards. The landlord submitted photographs and a letter from a realtor who entered the property on February 1, 2013 with the landlords noting the poor condition of the rental unit on that date.

The landlords say the damage and clean up cost \$1,253.82. The landlords' agent submitted that the smell of cat urine in the rental unit could "bring you to your knees" and it simply wasn't ready for re-renting on February 1, 2013 as the smell had to be remediated along with the rest of the cleaning and repairs to be done. In their written submissions the landlords stated:

We had 2 different people lined up to show the property on Feb 1st who were looking to move in immediately but obviously had to cancel those appointments at the home and property were in such bad condition.

At the hearing the landlords testified that they had secured tenants for February 1, 2013 and those tenants refused to move in once the condition of the rental unit became known. The landlords submitted that they had a letter from these tenants but no such letter was submitted in evidence.

The landlord therefore claims \$1,600.00 for loss of revenue for February as well.

The landlords are also seeking to retain the \$800.00 security deposit.

The tenant responded that she just wants to put this behind her and move on with life. The tenant says her husband died in that house and that when she vacated she went straight into hospital and was unable to clean the rental unit. The tenant says she remains ill.

The tenant says she paid someone a lot of money to remove her goods and clean the rental unit but apparently they did not do so. The tenant says she has receipts for the sums she paid for clean-up and removal of goods but receipts were not supplied.

The tenant says the landlords listed the house for sale and sold it so she should not be held responsible for loss of revenue for February. Further that a move-out Condition Inspection Report was not prepared and that she could not do this herself as she was hospitalized. The tenant also testified that she appointed someone to return the keys and do the report for her but that this party was not ready to do the report when the landlord wished to do it.

Agent for the landlords submitted that she made many attempts to get in touch with the tenant to find out how she wished to handle the move-out inspection and a woman named KP was appointed but a move-out report was not submitted in evidence.

The agent submitted that the tenants are a young family and being left with the mess and repairs was a hardship for them. Eventually they did decide to sell the property and it was sold on April 21, 2013.

The tenant submitted that regardless of whether a monetary award was issued or not it would not be paid because she is on disability social assistance and she has no money. The tenant offered to pay \$10.00 per month. However a settlement agreement between the parties could not be reached.

Analysis

From the photographs which remain undisputed it is apparent that whoever the tenant may have hired to clean the rental unit, make repairs and remove debris did not do so. While I am mindful of her situation at move-out the Act states that tenants are required to leave a rental unit in a reasonable state of cleanliness and repair. Based on the evidence before me, I cannot find that the tenant or her agents left the property in a reasonable state of cleanliness and repair. I therefore find that the evidence supports the landlords' claim for \$1,253.82.

With respect to February's rental loss, the landlords provided testimony but no supporting evidence to show that they did in fact advertise the rental unit once notice had been given on December 31, 2012. While they say they had a letter from a prospective tenant who was going to move in on February 1 no such letter was submitted in evidence.

Based on this evidence I am not satisfied that the landlords fully mitigated their damages such that they should be awarded rent for all of February 2013. However, based on the evidence, that I accept showing the condition of the rental unit at move out combined with the undisputed testimony regarding the cat odour that emanated, I am satisfied that it would have taken some time to repair and remediate the rental unit. I will therefore allow the landlords' half a months' rent for February 2013 that is \$800.00.

Calculation of monetary Order in favour of landlords:

Cleaning and repairs	\$1,253.82
Half of February's rent	800.00
Less Security deposit (no interest accrued)	-800.00
Filing fee paid for this application	50.00
Balance due and owing by tenant to landlords	\$1,303.82

Conclusion

The landlords are provided with an Order in the above terms. This is a final and binding Order enforceable as any Order 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: May 14, 2013

Residential Tenancy Branch

