



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

In the first application (second by filing number) the tenants seek recovery of a \$1000.00 security deposit. In the second application the landlord seeks recover for loss of rental income and for cleaning and repair costs.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show, on a balance of probabilities, that the landlord is entitled to recover any part of her claim?

Background and Evidence

The rental unit is a three bedroom portion of the top two floors of a house. The landlord offers a suite in the lower portion for rent to others. The tenancy started in January 2011 and appears to have proceeded without event until April 2013 when the tenants, after giving a verbal notice in late March or early April, vacated at the end of the month.

The rent was \$2000.00 per month and the landlord holds a \$1000.00 security deposit. The parties had a written tenancy agreement but one was not submitted as evidence.

After the tenants' verbal notice there was some discussion about them staying for part of the month of May, but that did not occur. The parties did a form of "walk through" at the end but no report was done. The landlord did not conduct a move-in inspection nor prepare a report, as required by law.

The landlord re-rented the premises as of mid-May, at a rent of \$1800.00..

The landlord claims for that loss of rental income and for carpet cleaning, repair of a washing machine, a lock change/repair, and for labour and material costs relating to the restoration of the lawn at the premises.

Analysis

I have little hesitation in awarding the landlord damages for loss of rental income for the month of May. The *Residential Tenancy Act* (the “Act”) requires that a tenant wishing to end a tenancy given written notice to the landlord. Verbal notice will not do. A landlord securing a replacement tenant merely upon the verbal promise of the original tenant puts herself in a very precarious position, risking the possibility of original tenant changing his or her mind. Without a written notice that landlord would have a very difficult time of it to obtain an order putting the new tenant into possession.

I find that the landlord has suffered a loss of \$1100.00, being the difference between the \$2000.00 rent she would have received from these tenants and the \$900.00 she received from the new tenants.

In regard to carpet cleaning, Residential Tenancy Policy Guideline #1 “Landlord & Tenant; Responsibility for Residential Premises” states that normally a tenant will be responsible to have the carpet shampooed after a tenancy of a year. In this case the tenancy lasted over two years but the tenant’s testify they shampooed or steam cleaned the carpets with a rented machine only a few months before leaving.

In light of this evidence I am reluctant to invoke the guideline provision. Without some evidence that the carpets actually needed professional cleaning, I find I must dismiss this item of the claim.

In regard to the repair of the washing machine, the landlord says that the drain had been clogged by coins. She produced an invoice showing a cost of \$105.00 from an appliance service indicating that indeed a filter was plugged. However, the service call was not made until May 28th, some 28 days after this tenancy ended and almost two weeks after new tenants took possession. In these circumstances, without some explanation, I cannot conclude that, on a balance of probabilities, the clogging occurred during this tenancy. I dismiss this item.

In regard to the lock change claim, the landlord is of the habit of changing locks after a tenancy. That is her decision and a tenant would not normally be responsible for the cost of her doing so. The landlord claims that the lock on the garage door was broken and it cost her \$84.00 to fix it. The tenant Mr. C. claims the door and lock worked just fine as far as he is aware. The locksmith invoice does not report a “broken” lock but merely that “your lock would not fit...” and that it was very hard to get the old “DBolt” off. On this competing evidence it has not been shown, on a balance of probabilities, that

the garage door lock required repair or the tenants should be responsible for such cost. I dismiss this item of the claim.

In regard to yard repair, the landlord claims that the tenants were obliged to maintain the rear and front yard and so failed to do so as to cause the lawn to die. She testifies that as a result it was necessary to pull up the existing turf, rototill and replace with new turf. The tenant Mr. C. testified that he had a lawnmower and mowed the lawn but did not consider it his job to maintain it. The landlord points to the tenancy agreement, which apparently contains a clause giving exclusive use of the backyard to these, upper tenants.

As recently pointed out by Mr. Justice Hunt of the BC Supreme Court in his decision in *Darbyshire v. Residential Tenancy Branch (Director)* 2013 BCSC 1277, an unwritten term of a tenancy agreement is not enforceable because it is not expressed in a manner that clearly communicates the rights and obligations under it as required by s. 6(3) of the *Act*.

In this case, the landlord has not set out in the written tenancy agreement that the upper tenants are responsible for any yard maintenance and so she cannot now claim the tenants have breached such a term. This portion of the claim must be dismissed.

Conclusion

The landlord is entitled to an award totalling \$1100.00 plus the \$50.00 filing fee. I authorize her to retain the \$1000.00 security deposit in reduction of the amount awarded. There will be a monetary order against the tenants, jointly and severally, for the remainder of \$150.00.

The tenants' application is dismissed in the circumstances.

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: August 01, 2013

Residential Tenancy Branch

