



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Performance Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD and FF

Introduction

This application was made by the landlord on May 13, 2013 seeking a monetary award for compensation after the tenants vacated the rental unit without notice and declined to proceed with the tenancy one day after having been given early possession. The landlord sought authorization to retain the security deposit and recovery of the filing fee for this proceeding.

Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to monetary award for the claims submitted.

Background and Evidence

On April 3, 2013, the parties signed a fixed term rental agreement to begin on May 1, 2013 and end on April 30, 2014. Rent was \$675 per month and the landlord holds a security deposit of \$337.50.

During the hearing, the parties gave evidence that the tenants had to vacate their former rental unit by May 27, 2013 and landlord had granted them early accesses to the rental unit on April 26, 2013.

On gaining access, the tenants noted cleaning deficiencies and submitted photographs showing some dead insects, mouse droppings and other dirt which the landlord noted was behind and beside appliances and in other harder to reach places.

The landlord submitted into evidence an invoice dated April 27, 2013 from a cleaning service as well as photographic evidence showing that the rental unit, including the areas previously cited by the tenants, had been cleaned completely.

The tenants also found that the refrigerator was not working and the landlord submitted into evidence a copy of a service call billing dated April 30, 2013 in which it was recommended that the unit should be replaced rather than repaired. The landlord submitted evidence that it was replaced on May 12, 2013 and would have been replaced much sooner if the tenants had remained.

The tenants stated that they believed the rental unit was not in compliance with clause 10.1.) a) of the rental agreement which repeats the requirements of section 32 of the *Act* that the landlord must provide and maintain the rental unit in a state of decoration and repair suitable for occupation and in compliance with health, safety and housing standards required by law.

Therefore the tenants chose repudiate the rental agreement on April 27, 2013.

The landlord was able to find new tenants for May 15, 2013 and claims only the security deposit to cover the loss of rent for the first two weeks of May and recovery of the filing fee for this proceeding.

Analysis

Tenants may give notice to end a fixed term rental agreement to take effect before the agreement's end date only if the landlord is in breach of a material term of the rental agreement and had not remedied the breach within a reasonable time of written notice to do so.

In the present matter, the official start date of the tenancy was four days away and, while there was no written notice of a breach, the landlord had remedied the tenants' concerns about cleaning the day after they raised them and had taken steps to deal with the refrigerator at the earliest possible time.

Section 7 of the Act provides that if one party to a rental agreement suffers a loss due to the non-compliance of the other with the agreement or the legislation, then the non-compliant party must compensate the other for the loss.

In the present matter, I find that the tenant's breached the fixed term agreement and they are responsible for the landlord's consequent losses which, fortunately, are limited to one-half a month's rent, or \$337.50, the value of the security deposit.

As authorized under section 72 of the *Act*, I order that the landlord may retain the security deposit in satisfaction of the debt.

I further find that, as the application has succeeded on its merits, the landlord is entitled to recover the \$50 filing fee for this proceeding from the tenants and is issued with a Monetary Order in that amount.

Conclusion

In addition to authorization to retain the security deposit in set off for unpaid rent, the landlord's copy of this decision is accompanied by a Monetary Order for \$50, enforceable through the Provincial Court of British Columbia 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: August 12, 2013

Residential Tenancy Branch

