



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capilano Property Management Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This is an application filed by the landlord for a monetary order for damage to the unit, site or property, for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The landlord has provided documentary evidence, which the tenant has acknowledged receiving. The tenant has provided documentary evidence, but states that the landlord was not provided any copies of the documentary evidence. The landlord confirms not receiving any documentary evidence from the landlord. The tenant states that they were unaware that documentary evidence needed to be provided to the landlord. I find that the landlord has properly served the tenant with the notice of hearing package and the submitted documentary evidence. The tenant has failed to properly serve the landlord with their documentary evidence and as such, I find that it would be unfair to refer to the tenant's documentary evidence. The tenant's documentary evidence is inadmissible for this hearing. The tenant was advised that he could provide any relevant evidence in his direct testimony.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?
Is the landlord entitled to retain the security deposit?

Background and Evidence

This tenancy began on July 1, 2009 on a signed fixed term tenancy ending on June 30, 2010 which later became a month to month term. The monthly rent is \$940.00 payable on the 1st of each month and a security deposit of \$449.50 was paid on July 1, 2009.

The landlord seeks a monetary claim of \$1,895.00 which consists of \$940.00 for loss of rental income for short notice, \$84.00 for carpet cleaning, \$44.00 for drapery cleaning, \$144.26 for drapery panel replacement and \$225.00 for paint damage repair costs.

The landlord states that the tenants gave written notice to vacate the rental unit on December 25, 2013 to move-out on December 31, 2013 as shown by the submitted copy of the written notice dated December 25, 2013. The tenant disputes this stating that the tenant had provided written notice to vacate atleast two previous times, but were unable to move-out to a new rental. The landlord states that the tenants were informed that short notice would mean that they would still be responsible for the rental unit if the landlord was unable to re-rent the unit. The landlord states that the rental was not re-rented for January 2014. The landlord states that upon a condition inspection report completed on the move-out on December 31, 2013 the tenants refused to sign the report as they disputed its contents. The landlord states that the tenants failed to have the carpets professionally steam cleaned and the drapery dry cleaned as per the agreed term on condition #11 of the additional terms of the signed tenancy agreement. The tenant's agent agreed stating that both were clean, but were unaware of the condition on the signed tenancy agreement. The addendum condition #11 shows the tenant's initials noted next to each additional term. The landlord also states that there was missing panels for one of the drapes requiring replacement. The tenant states that the missing panels were returned to the landlord. The landlord relies on the condition inspection report for the move-in and the incomplete condition inspection report for the move-out. The landlord states that the tenants caused damage by spray painting the balcony wall and railing and painting the cupboards in the kitchen. The tenants admit to painting the cupboards without permission of the landlord, but states that the paint on the balcony were present before they moved in.

Analysis

I find based upon the evidence provided by both parties that the landlord has established a claim for loss of income of \$940.00 for January 2014. The tenants failed to provide the required 1 months notice to vacate the rental unit on December 31, 2013

as per the tenant's written notice dated December 25, 2013 to move out on December 31, 2013.

The landlord has also established a monetary claim for the \$84.00 carpet cleaning and the \$44.00 in drapery cleaning as required per condition #11 of the additional terms for which the tenant had signed in agreement. The landlord has established a total claim of \$128.00 for this portion of the claim.

I find that the landlord has failed in the claim for \$144.26 for drapery panel replacement. The tenant has disputed this claim stating that the panels were returned. The landlord relies on a condition inspection report for the move-in and cannot provide any other evidence to support the claim that the panels were missing at the end of the tenancy. This portion of the landlord's claim is dismissed.

The tenant has admitted to painting the cupboards, but has disputed causing the paint damage to the balcony and that it was present at the beginning of the tenancy. The landlord relies on the completed condition inspection report for the move-in and photographs depicting the paint damage. The tenant disputes the report stating that they were not aware that listing all of the many faults on the report were required to secure their security deposit. In this case, I prefer the evidence of the landlord over that of the tenants. The tenant has admitted to painting the cupboards without permission or notice. The landlord's photographs clearly show the paint damage on the balcony and that the cupboards were repainted. The landlord has failed to provide any documentary evidence for the cost of the repairs. I find that the landlord has failed to establish a damage claim for \$225.00. However, I find that the landlord has established that damage occurred as a result of the actions of the tenant. As such, I find that the landlord is entitled to a nominal award of \$100.00 as compensation for paint damage caused by the tenant.

The landlord has established a total monetary claim of \$1,168.00. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the \$449.50 security deposit and I grant a monetary order under section 67 for the balance due of \$768.50. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for \$768.50.
The landlord may retain the security deposit.

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 01, 2014

Residential Tenancy Branch

