



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the landlords for a monetary order and an order authorizing them to retain the security deposit and a cross-application by the tenant for a monetary order and an order for the return of the deposit. Both parties participated in the conference call hearing with the female landlord, M.W., representing both landlords.

Issues to be Decided

Are the landlords entitled to a monetary order as claimed?
Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began in May 2009 at which time the tenant paid a \$325.00 security deposit. They further agreed that on or about October 27, 2013, the landlords gave the tenant a letter advising that their daughter would be moving in to the rental unit and that the tenant would have to vacate the unit by January 31, 2014. The letter also stated: "If you happen to find somewhere before that, we will not hold you to our place."

At some point in early to mid-November, the tenant telephoned the landlords to advise that she would be vacating the unit on November 30. The landlords did not formally schedule a condition inspection, expecting that the tenant would be available to do the inspection at the time she surrendered the keys. Unfortunately, the landlords were not available when the tenant dropped off the keys and the parties did not inspect the unit together at the end of the tenancy.

The landlords seek unpaid rent for the month of December as the tenant failed to give one full month's notice that she was ending the tenancy. The tenant argued that the landlord's notice gave her permission to end her tenancy early.

The landlords also seek \$220.00 as the cost of cleaning the unit and the carpet. They provided an invoice showing that they paid this amount to a professional cleaning service and also provided a photograph showing an uncleaned toilet. The tenant insisted that she thoroughly cleaned the rental unit at the end of the tenancy except that she did not clean the mold on the window sills as she has a lung condition and will not deal with black mold. She further argued that even when she cleaned the sills, the condensation caused mold to quickly grow back. She acknowledged that she did not clean the carpet, but testified that it was an older carpet and didn't require additional cleaning. The tenant argued that the landlords should not be able to claim against the security deposit since they failed to conduct an inspection at the end of the tenancy.

The landlords seek \$275.00 as the cost of filling nail holes and painting the unit. They provided an invoice showing that they paid this amount to have the work performed and provided pictures of various areas of the wall which had to be patched and then repainted. The tenant argued that this was simply reasonable wear and tear as she had the right to hang pictures during her tenancy.

The tenant seeks the return of her rent and the equivalent of one month's rent as she was not compensated for having to move out of the unit.

Both parties seek to recover the filing fees paid to bring their respective applications.

Analysis

The *Residential Tenancy Act* clearly sets out the means by which parties may end a tenancy. Landlords who wish to end a tenancy because they intend for a close family member to move into the rental unit are required to use the form provided by the Residential Tenancy Branch and give the tenant the equivalent of one month's rent in compensation. The landlords in this case did not follow the requirements set out in the Act.

The Act also provides that tenants who receive a notice to end tenancy for this reason may end the tenancy sooner than the effective date of the notice by giving the landlord at least 10 days *written* notice that they will be ending the tenancy early. The tenant did not follow the requirements set out in the Act.

I find it appropriate to hold both parties to the same standard and give them each the same benefit and liabilities that they would have had if they had complied with the Act. I find that the note provided by the landlords that purported to end the tenancy should have the same legal effect as a formal notice and therefore the landlords must pay the tenant the equivalent of one month's rent pursuant to section 51(1). I find that the tenant had the right to end the tenancy on 10 days' notice and that her verbal notice had the same legal effect as a written notice. I find that the tenant is therefore not obligated to pay rent for December and I dismiss the landlords' claim for December's rent. I award the tenant \$650.00 which represents the compensation to which she is entitled under section 51(1).

The tenant claimed that she thoroughly cleaned the unit except for the window sills. Mold growth is to be expected in the lower mainland and requires diligent cleaning. The tenant cannot be excused for not cleaning mold when regular cleaning could keep the growth under control. The landlords' photograph of the toilet shows that the toilet had not been cleaned for quite some time. Further, Residential Tenancy Policy Guideline #1 provides that when a tenancy has lasted for more than one year, the tenant is expected to shampoo the carpet. For these reasons, I find it more likely than not that the tenant failed to adequately clean the unit. I find the cleaning costs to be reasonable and I award the landlords \$220.00 for cleaning.

The landlords' photographs show that there are an excessive number of patches in the walls of the unit. As the move-in condition inspection report shows that the walls were freshly painted at the beginning of the tenancy, I find that the holes or damage which required patching were caused by the tenant. The tenant is entitled to hang pictures in the rental unit, but may not create an unreasonable number of holes or other damage to the walls. I find that amount of damage to be unreasonable. However, Residential Tenancy Policy Guideline #40 provides that the useful life of interior paint is 4 years and I find that the walls would likely have had to have been repainted in any event. I find that the tenant should only be held responsible for the additional labour involved in patching the holes and as this part of the work is not itemized on the invoice, I find that \$50.00 is a reasonable amount for that labour. I award the landlords \$50.00.

The tenant argued that the landlords' right to claim against the deposit has been extinguished. I agree that it has been extinguished. The landlords had an obligation to formally schedule a time for the condition inspection and use the form provided by the Residential Tenancy Branch. The landlords acknowledged that they did not perform a condition inspection of the unit and generate a report at the end of the tenancy. However, while the Act provides that the landlords' right to claim against the deposit is extinguished, the Act does not prohibit the landlords from making a monetary claim

against the tenant and section 72(2)(b) of the Act permits the landlords to deduct a monetary award from the security deposit. The net result of the interaction of these sections is that the security deposit may be applied to any monetary award made to the landlord.

Both parties have enjoyed some success in their applications and I find that each should bear the cost of their filing fees.

Conclusion

The landlords have been awarded \$270.00 which represents cleaning and wall repair. I order them to retain this amount from the \$325.00 security deposit and return the balance of \$55.00 to the tenant together with the \$650.00 she has been awarded. I grant the tenant a monetary order under section 67 for \$705.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: April 14, 2014

Residential Tenancy Branch

