



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MND, MNR, FF

Introduction

The landlords by amended claim apply for a monetary award for loss of rental income and for damages for the tenants' alleged failure to clean and repair the premises and to restore the premises to its original condition.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the landlords are entitled to any of the relief requested?

Background and Evidence

The rental unit is a five or six bedroom house on Quadra Island. The tenancy started in May 2011 and purported to end May 31, 2014. There is a dispute about the form of notice given to end the tenancy. The keys were ultimately returned to the landlords on June 14th. The rent was \$900.00 per month. Neither a security deposit or pet damage deposit was paid.

There is a written tenancy agreement. The landlords conducted neither a move-in condition inspection nor a move-out inspection and the condition reports required of a landlord by the *Residential Tenancy Act* (the "Act") were not prepared.

The landlord Ms. S.W. claims that the tenants converted a bedroom to a workshop and failed to restore the room to its original condition upon leaving. She produces an estimate from an acquaintance in the construction business indicating \$2550.00 plus taxes would be the cost to restore the room.

The tenants say the landlords approved the changes and that the landlord Mr. D. L. (who did not attend the hearing) had been in the room and seen the changes and made no comment.

The landlord Ms. S.W. claims the tenants left the house dirty and smelly and that she paid a friend's daughter \$80.00 to clean. The tenants deny the premises were dirty or smelly.

The landlord Ms. S.W. claims the tenants had a pet crow that left a bird dropping on the living room carpet. The tenants deny it. It is not clear that this particular item is part of any of the claim but for, perhaps, the cleaning claim.

The landlord Ms. S.W. claims the tenants removed the kitchen blinds. The tenants say there weren't any blinds there on move in.

The landlords claim loss of June rent. The tenants appear to acknowledge responsibility, at least for that portion of June that they possessed the premises.

Ms. S.W. claims that the landlords attended at this relatively remote location from their home in New Westminster on May 31st, expecting that the tenants would be gone that day. The tenants were not gone and so a second trip was required in mid June and the landlords thus incurred additional ferry and gasoline expenses, claimed to be \$250.57.

The tenants say the landlords should have called ahead before coming to Quadra Island on May 31 and if they had then they could have saved themselves a trip, because the tenants were not ready to move.

Analysis

The landlord Ms. S.W. says the tenants were served with a two month Notice to End Tenancy for landlord use of property, effective May 31. The tenants deny receiving such a document. How this tenancy ended remains vague but it is sufficiently clear for me to find that the parties agreed that their tenancy would come to an end on May 31 2014 because the landlords wanted to use the property for themselves. It is apparent that in accordance with s. 51 of the *Act*, the May rent was not charged or paid because it was the "tenant compensation" due whenever a landlord issues a two month Notice. The landlords do not seek that money here.

As there was no tenancy after May 31st, legally no "rent" was due or payable. Overholding residential tenants are normally subject to a claim for damages for loss of

rental income suffered by a landlord as a result of being unable to rent the premises to other, new tenants. That is not the case here. The premises were off the market so to speak. The landlords did not suffer a loss of rental income. Indeed, they did not appear to suffer any loss of use of the premises either. For that reason I dismiss their claim for recover of June rent or the equivalent loss of rental income for any portion of the month of June.

I award the landlords the extra expense of \$250.97, incurred by the tenants' failure to vacate by May 31. I do not agree that it was the landlords' job to double check the tenants were going to leave. Rather, I have found that the tenancy was to end May 31 and if the tenants could not comply then it was their duty to inform the landlords.

I dismiss in part the landlords' claim for \$2550.00 and taxes for restoration of the "bedroom" on the top floor of the house. At move in the room was an unfinished room composed of a plywood floor and chipboard walls. It appears the tenants painted the walls and floors white, installed some cabinetry or counters and a light fixture and plug outlet. The tenants argue they had permission to do so. The landlord Ms. S.L. denies it and, in the face of that denial, the tenants have not satisfied the burden of proof on them to establish that permission. I find they were responsible to restore the room to its original condition before they left. As stated at hearing, that responsibility is regardless of the fact that many might consider the tenants' work in the room a definite "improvement."

At the same time, the landlords' evidence about what needs to be done and what it will cost, is very vague. The "estimate" from Mr. S. is of little use. He did not view the room. His estimate speaks of drywalling, installing laminate flooring and doing work in the kitchen. The tenants' are not responsible to pay for drywall or laminate flooring when there wasn't any in the room to begin with. Nor are they responsible for work to be done in the kitchen.

I find that to restore the room to its plywood floor and chipboard walls would be very inexpensive and may simply involve prying the painted boards off and reversing them or covering them over with equivalent material. The light fixture and extra plug could be covered over at the same time. Even though the amount to do so might be difficult for me to ascertain due to lack of evidence, I am bound to award the landlords something for the work. All in all, I consider \$200.00 to be an adequate compensation for the cost and effort restore the room to its rather unimproved state.

The landlords have done themselves a significant disservice by failing to comply with their statutory obligation to prepare move-in and move-out condition reports. Without

those reports and on the competing evidence, I am unable to determine whether at the end of the tenancy, the premises were not reasonably clean, that three kitchen blinds were missing or that moulding above the fireplace mantle had been damaged and so I dismiss those items of the claim.

Conclusion

The landlords will have a monetary order totalling \$450.97 plus the \$50.00 filing fee. There will be a monetary order against the tenants jointly and severally in the amount of \$500.97.

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 19, 2014

Residential Tenancy Branch

