



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Trans Canada Products Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNR, MND, MNDC, FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for authority to retain the tenants' security deposit and pet damage deposit, a monetary order for money owed or compensation for damage or loss, alleged damage to the rental unit, and unpaid rent, and for recovery of the filing fee paid for this application.

The parties attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond each to the other, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-As to the matter of the parties' documentary evidence, the landlord denied receiving the tenants' evidence, which the tenants claim was served personally on October 3, 2014 and as a matter of note, was the first evidence received regarding this application.

The landlord's documentary evidence, which was not filed with their application as required by the Rules, but rather on September 30, 2014, was sent by registered mail, according to the landlord.

I have accepted all documentary evidence as neither party requested an adjournment of the hearing.

Issue(s) to be Decided

Is the landlord to retain the tenants' security deposit and pet damage deposit, further monetary compensation, and for recovery of the filing fee paid for this application?

Background and Evidence

I heard evidence from the landlord that this 1 year, fixed term tenancy began on January 1, 2014, that monthly rent was \$800, and that the tenants paid a security deposit and pet damage deposit of \$400 each at the beginning of the tenancy.

The tenancy ended near the end of May 2014, according to the landlord and she retains the tenants' security deposit and pet damage deposit.

The landlord's monetary claim is \$2486, comprised of wall and ceiling cleaning of \$336, floor repairs for \$1050, unpaid rent for \$800, cleaning and repairs for \$200, and the filing fee of \$50. The landlord attempted to alter their monetary claim through their evidence, with an addition of a \$25 late fee for May 2014. I have declined this additional request, as the landlord's application was not amended to include the extra amount.

Wall and ceiling cleaning-

The landlord submitted that it was necessary to have the walls and ceiling in the rental unit cleaned due to the smell of "skunk weed." The landlord submitted further that a special deodorizer was used. The landlord submitted further that even though her evidence shows an estimate for the work, she has now had the rental unit deodorized.

In response, the tenants submitted that when they moved in, they were told that the landlord deodorizes the rental unit because the next door neighbour, another tenant, smokes and leaves his door open to the common area, and because of the restaurant below the rental units. The tenants said they were told by the landlord that the building was non-smoking, but this turned out not to be the case.

The tenants denied ever smoking and that they are not smokers, that they do use medical marijuana in cooking and in a topical ointment, but there is no cooktop vent fan in the rental unit.

Floors-

The landlord submitted that the hardwood floor was sanded and varnished before the tenants moved in and that they damaged the floor, surmising that the water damage came from flower pots on the floor.

In response to my question, the landlord confirmed that she has not repaired the floor damage and that new tenants occupy the rental unit.

In response, the tenants submitted that when they moved in, some of the landlord's personal property was still in the rental unit and that there was a dresser over the damaged portion of the floor which they could not see at the time of moving in. After the landlord removed the dresser, they saw the water damage.

The tenants submitted further that the pictures submitted by the landlord show that the water damage was under the shellac in the floor, that the previous tenants and that their flower pots were outside the rental unit.

Unpaid rent-

The landlord submitted that the tenants stayed in the rental unit through June 28, didn't pay rent and therefore are liable for the rent for June. The landlord submitted further that she began advertising the rental unit, despite not receiving written notice from the tenants, and was not able to acquire new tenants until July 18, 2014.

In response, the tenants disputed that the landlord did not have a new tenant until July 18, and that when they received a 1 Month Notice to End Tenancy for Cause on May 27, 2014, from the landlord, she told them they could leave at any time. The tenants stated that the advertised available date for the rental unit was on July 1, 2014. The tenants submitted further that the landlord saw their moving boxes in May 2014, and that when they went to get the remainder of their personal property in May, the landlord already had her belongings in the rental unit. The tenants submitted further that they were to meet the landlord for a final inspection on May 31, 2014, and pointed out the pictures were taken on May 30.

Cleaning-

As to the cleaning charge, the landlord submitted that she had to have the rental unit cleaned after the tenants vacated, such as pulling out nails, cleaning windows and blinds, and the refrigerator and stove. The landlord submitted further that the parties arranged for a final inspection on June 9.

In response, the tenants submitted that the first final inspection was on May 25, for a follow-up on May 31, 2014, for which the landlord failed to attend.

The tenants submitted further that there were nails already in the walls when they moved in. The tenants questioned the condition inspection report, as it was illegible and not filled in correctly.

The landlord's relevant additional evidence included, but was not limited to, a receipt for cleaning, the estimate for the wall and ceiling cleaning, an estimate for the floor repair, a condition inspection report, which the landlord confirmed was not signed by the tenants at the move-in due to her error, and written communication between the parties.

The tenants' relevant documentary evidence included, but was not limited to, a written response to the landlord's application, a timeline of events, witness statements, medical information concerning the tenants' health and approval for medical marijuana use, and written communication between the parties.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that occurs as a result, so long as the applicant verifies the loss, as required under section 67. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

Wall and ceiling cleaning; floors-

As to the landlord's claim for damage, I found I could not rely on the condition inspection report, as the tenants had not signed the move-in inspection report noting their agreement at the beginning of the tenancy, and I found the landlord's various notations to be illegible, confusing, and non-descriptive.

I also could not rely on the landlord's photographs as proof of the damage, as there was not a photograph of the same location from the beginning of the tenancy and some, if not most, of the photographs did not contain a description. In some instances, I was not able to determine what the landlord attempted to prove as I did not find any issue with the item or location.

I find that the tenants provided clear and consistent evidence that the water mark on the floor was covered by the landlord's dresser prior to the move-in, and that the water mark therefore was pre-existing prior to this tenancy. I also find the landlord has not submitted any evidence that she had the floor refinished immediately prior to this tenancy, as claimed, or that she will ever incur a loss, as the work has not been started, even though new tenants occupy the rental unit.

As to the wall and ceiling cleaning, I accept the tenants' version of events that the landlord cleans the wall and ceiling between tenants as a matter of course, due to the tenant next door smoking and the restaurant below the rental unit, and I also find the landlord submitted insufficient evidence that the tenants left smoke marks and odours which required cleaning.

Due to the above, I therefore dismiss the landlord's claim for wall and ceiling cleaning and for floor repair.

Unpaid rent-

Section 45(2) of the Act states that the tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term.

In the case, I accept that the tenants provided insufficient notice that they were ending the fixed term tenancy agreement prior to the end of the fixed term and I find the tenants were responsible to pay monthly rent to the landlord until the end of the fixed term, subject to the landlord's requirement that they take reasonable measures to minimize their loss.

In this instance, I find the landlord failed to submit sufficient evidence that she took reasonable steps to mitigate her loss of rent revenue. I reached this conclusion due to the landlord's failure to submit any evidence of her attempts to advertise the rental unit in order to find a new tenant for June, and I was therefore unable to examine the form, content and frequency of the advertisements. I was further persuaded by the landlord's inconsistent testimony, at first stating in the hearing that the tenants moved out by the end of May and then testifying that they vacated in late June and her failure to provide consistent evidence as to when she received notice the tenants were vacating.

I therefore dismiss the landlord's claim for \$800.

Cleaning-

I find the landlord failed to submitted sufficient evidence that she incurred the cost of \$200 for cleaning. The receipt provided by the landlord was a generic receipt, with no identifying information, and was not signed by anyone. I therefore find the landlord submitted insufficient evidence to support her claim for cleaning and I dismiss her claim of \$200.

Due to the above, as I have dismissed the landlord's entire claim, I dismiss her application, including her request to recover the filing fee paid for this application.

As I have dismissed the landlord's application claiming against the tenants' security deposit of \$400 and pet damage deposit of \$400, I order that the landlord return the tenants' security deposit and pet damage deposit to them immediately.

Pursuant to this order, I therefore grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act in the amount of \$800, which is enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants this amount without delay after it is served upon her, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of enforcement may be recoverable from the landlord.

Conclusion

The landlord's application is dismissed for the reasons set out above.

The landlord is ordered to return the tenants' security deposit and pet damage deposit and the tenants are granted a monetary order in the amount of their security deposit and pet damage deposit, \$800.

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: November 3, 2014

Residential Tenancy Branch

