



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Properties LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNR, MND, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent, damage to the rental unit, damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on November 21, 2014 copies of the Application for Dispute Resolution and Notice of Hearing and evidence were sent to the tenant by registered mail. The landlord used the forwarding address provided by the tenant when he gave written notice ending the tenancy. A Canada Post tracking number was provided as evidence of service.

These documents are deemed to have been served effective November 26, 2014 in accordance with section 89 and 90 of the *Act*; however the Tenant did not appear at the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$1,100.00 for November 2014 rent?

Is the landlord entitled to compensation in the sum of \$500.00 as liquidated damages?

Is the landlord entitled to compensation in the sum of \$270.75 for cleaning (\$111.00) and carpet cleaning (\$159.75)?

Background and Evidence

The one year fixed-term tenancy commenced on August 1, 2014. Rent was \$1,100.00 due on the first day of each month. A security deposit in the sum of \$550.00 was paid. A copy of the tenancy agreement and move-in condition inspection report were supplied as evidence.

On October 31, 2014 the tenant gave written notice ending the tenancy effective November 15, 2014. The note supplied a forwarding address for the tenant.

The tenant did not pay November 2014 rent. On November 4, 2014 the landlord issued a 10 day Notice ending tenancy for unpaid rent which was posted to the door on that day.

The tenant agreed to meet the landlord on November 15, 2014 at 9:30 a.m. to complete a move-out condition inspection report. The tenant did not attend but left a note in the suite which said he had hurt his neck and gone to Vancouver. The landlord then posted a notice of final opportunity to complete the inspection but the tenant did not attend.

The landlord's building maintenance person supplied notes of the cleaning that was completed to the unit: the stove was filthy, the fridge, floor and cupboards needed cleaning. The toilet, tub, tiles required cleaning. The carpets were stained and were professionally cleaned, with an enzyme application made due to the stains. The landlord inadvertently failed to supply a copy of the carpet cleaning invoice. The cleaning was completed by the maintenance staff person.

The move-out condition inspection report completed by the landlord included notations of the areas that were not clean and that required repair.

The landlord supplied photocopies of photographs which were difficult to discern.

Clause 5 of the tenancy agreement is a liquidated damages clause meant as a genuine pre-estimate of the landlord's cost for re-renting should the tenant end the tenancy in less than 12 months. The landlord was able to mitigate the loss of rent revenue by locating new tenants effective December 1, 2014.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

A tenant is required to leave a rental unit reasonably clean at the end of the tenancy. From the evidence before me and in the absence of the tenant who was served with notice of this hearing, I find that the claim for cleaning is supported and that the landlord is entitled to the costs as claimed. I find that the tenant did not leave the unit reasonable clean, resulting in costs incurred by the landlord.

I find that the landlord is entitled to compensation for unpaid rent from November 1, 2014 to November 14, 2014 when the tenant vacated plus loss of rent revenue from November 15 to 30 November, 2014 totalling \$1,100.00. The tenant ended the tenancy in breach of the legislation and failed to pay the rent owed. When the tenant vacated in mid-November 2014, this resulted in a loss of rent revenue to the landlord. I note the tenancy agreement shows rent owed as \$1,100.00; the application indicates rent in the sum of \$1,140.00.

The tenant signed a fixed-term tenancy agreement that imposed what I find to be a reasonable pre-estimate of the costs that could be incurred by the landlord as a result of an early end of the tenancy. Therefore, I find that the landlord is entitled to

compensation as claimed, based on clause five of the tenancy agreement, for liquidated damages.

As the landlord's application has merit I find that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the sum of \$550.00, in partial satisfaction of the monetary claim.

Therefore, the landlord is entitled to compensation in the sum of \$1,100.00 (November 2014 rent and rent revenue); cleaning (\$111.00), carpet cleaning (\$159.75), liquidated damages (\$500.00) and the \$50.00 filing fee.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,370.75. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to the sums claimed.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

A monetary Order has been issued for the balance owed to the landlord.

This decision is final and binding and 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: July 08, 2015

Residential Tenancy Branch

