



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for damage to the unit, site or property, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on April 11, 2015. I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Are there damages to the unit and if so how much?
4. Is the Landlord entitled to compensation for the damage and if so how much?
5. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on August 1, 2014 as a fixed term tenancy with an expiry date of August 1, 2015. Rent was \$1,350.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$1,350.00 on July 2, 2014. The parties agreed that the Tenant moved out of the rental unit on March 28, 2015 as a result of a 1 Month Notice to End Tenancy for cause dated February 16, 2015. There was no move in condition inspection report completed on move in and a walk through and report was completed and signed on move out.

The Landlord said that the Tenant agreed that he could use the security deposit of \$1,350.00 for the March, 2015 rent but there is no written agreement so he is requesting compensation for unpaid rent for March, 2015 in the amount of \$1,350.00. As well the Landlord said that he was not able to show the unit during March, 2015 because the

Tenant did not have it in showing condition. The Landlord said he submitted a video dated March 17, 2015 that supports this statement. As a result the Landlord was not able to rent the unit until May 1, 2015 so he is requesting compensation for lost rental income in the amount of \$1,350.00 for the month of April, 2015.

Further the Landlord said he is requesting compensation for \$50.40 for a door repair/milling (receipt provided), the Strata moving fee of \$150.00, carpet replacement of \$1,500.00 which is an estimate as the carpet has not been replaced as of yet, \$210.00 for the Landlord's time and labour to clean and repair the rental unit after the Tenant moved out and the cost of replacing the security FOB in the amount of \$100.00 (no receipt provided).

The Tenant said that they cleaned the unit and she provided a witness A.L. that said the unit was cleaned to a rentable condition in her mind. Therefore the Tenant said the Landlord should not be successful on his cleaning claims. Further the Tenant said they had the carpets professionally cleaned and the Tenant provided the receipt for the cleaning in her evidence package. The Tenant said that because the Landlord did not do a move in condition inspection report the Landlord really has no claim for damages because there is no base line to measure any damages from.

Further the Tenant said there is no agreement about her paying the strata moving fee therefore she does not believe it is her responsibility. As well the Tenant said they replaced the broken door and said they would mill it so that it could be hung but the Landlord did not contact them so they left it. The Tenant also said the FOB and replacement door handle is not her responsibility as the Landlord has both of them.

The Landlord agreed he had the door handle and he is not claiming it now, but the Landlord said the FOB the Tenant returned did not work and he had to replace it.

With respect to the cleanliness of the unit the Landlord called a Witness M.S. who said the unit was not clean at the end of the tenancy. The Witness said there was food in the frig, food in the microwave, the bathroom was not clean and there were stains on the carpet and on the sundeck.

The Tenant and the Tenant's witness said they removed the food, wiped down the counters and the Tenant's husband cleaned the stains of the deck.

In closing the Tenant said the Landlord did not do a move in inspection therefore his damage claims are extinguished. The security deposit covers the March, 2015 rent and the Landlord did not give any written notice to show the property therefore it is not the Tenant's responsibility that the unit was not rent until May 1, 2015. As well the Landlord has not provided paid receipts for most of his claims and the carpet was 7 years old and stained when the Tenant moved in.

The Landlord said in closing that the Tenant breached the tenancy agreement by bringing a dog into the unit and the dog is partially responsible for the damage in the

unit. The Landlord said his March 17, 2015 video shows the unit in an unclean condition which made it impossible to show the unit to new potential tenants. The Landlord said this is not personal as he is operating a rental business and these are costs that he has incurred because of this tenancy.

Analysis

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45 of the Act says a Tenant may end a fixed term tenancy not earlier than the date specified in the tenancy agreement and it must be with written notice at least one month prior to the date that rent is payable.

In this situation the Tenant breached the tenancy agreement and moved out because of the Notice to End Tenancy issued by the Landlord. The Tenant does not have the right under the Act to withhold part or all of the rent; therefore I find the Tenant is responsible for the unpaid rent for March, 2015 and the lost rental income for April, 2015 of \$1,350.00.

Section 23 of the Act say that a landlord and tenant must do condition inspections to establish the condition of the rental unit at the start of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start of the tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit.

I find the Landlord is unable to establish the condition of the rental unit at the start of the tenancy therefore the Landlord cannot establish the amount of damage if any was caused to the rental unit. Consequently, I find that the Landlord has not established proof that the Tenant damaged the rental unit. I dismiss the Landlord's claims for replacement of the carpet in the amount of \$1,500.00 and for the door knob for an estimated amount of \$100.00.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

The Landlord must show a loss exists and the Landlord must verify the losses by providing receipts for the claims that the Landlord has made. I accept the Landlord's testimony and Tenant agreed that the door was damaged and had to be replaced. As well to do that the door required milling. I award the Landlord \$50.40 to recover the costs of preparing the replacement door. As for the Landlord's claims for a new FOB for \$100.00, and the strata moving fee of \$150.00 I dismiss these claims as the Landlord has not provided paid receipts to verify the claims.

Further I have reviewed all the photographic and video evidence and I find this information is unclear as to the final condition of the rental unit on move out. The Tenant did have the carpets professionally cleaned but pictures of the stove, microwave and bathroom show dirt and debris left behind. The move out report which is signed by both parties indicates the kitchen is dirty and the bathroom is dirty. As the report is signed by both parties I will rely on the move out condition inspection report as the evidence to indicate the condition of the rental unit. Consequently I find the Landlord did have to clean the unit and I award the Landlord his labour costs of \$210.00.

As the Landlord has been partially successful in this matter, the Landlord is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 1,350.00
	Lost rental income	\$ 1,350.00
	Door milling	\$ 50.40
	Landlord's labour	\$ 210.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$3,010.40
Less:	Security Deposit	\$ 1,350.00
	Subtotal:	\$ 1,350.00
	Balance Owing	\$ 1,660.40

Conclusion

A Monetary Order in the amount of \$1,660.40 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: September 15, 2015

Residential Tenancy Branch

