



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remax Kelowna Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MND, MNDC, MNSD, FF

Introduction

This hearing concerns the landlord's application for a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of all or part of the pet damage deposit / and recovery of the filing fee. The landlord's agent (the "landlord") and the tenant both attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit which is the subject of this dispute is located in the lower portion of a 2 storey house. Other renters occupy the upper portion of the house.

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the subject tenancy began on January 03, 2014. Prior to the start of this particular tenancy, however, the tenant resided in the unit for a period of years while it was owned by the former landlord(s) [the tenant's parent(s).] Monthly rent of \$1,150.00 was due and payable in advance on the first day of each month. While no security deposit was collected, a pet damage deposit in the amount of \$500.00 was collected. A move-in condition inspection report was not completed.

By email dated April 09, 2015, the tenant gave notice to end tenancy effective May 31, 2015. A move-out condition inspection report was completed with the participation of both parties, and the tenant provided his forwarding address on the report.

The landlord testified that advertising for new renters commenced around the time when the tenant's notice was received. New renters were found effective from July 01, 2015.

The landlord's application was filed on June 13, 2015 and later amended on June 16, 2015. The landlord seeks compensation for cleaning required in the unit, but also for loss of rental income which was allegedly the result of the condition of the unit, as well as the tenant's presence and conduct during showings to prospective renters.

Analysis

Based on the documentary evidence and affirmed testimony of the parties, the various aspects of the landlord's application and my related findings are set out below.

\$245.00: *unit cleaning*

During the hearing the landlord amended the amount of \$257.25 claimed in the application, to \$245.00, which is the amount shown on a receipt submitted in evidence.

Section 37 of the Act which addresses **Leaving the rental unit at the end of tenancy**, in part:

37(1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and.....

The landlord testified that there was no evidence of any cleaning having been undertaken by the tenant when the tenancy ended, while the tenant took the position that the landlord was exaggerating the dirty condition of the unit.

I note that the term "dirty" appears frequently throughout the move-out condition inspection report, and I further note that the tenant's signature on the move-out condition inspection report reflects his agreement that the report "fairly represents the condition of the rental unit." In the result, I find that the landlord has established entitlement to the full amount claimed, as amended.

\$110.25: *carpet cleaning*

During the hearing the tenant testified that he does not dispute this aspect of the landlord's application. Accordingly, I find that the landlord has established entitlement to the full amount claimed.

\$1,150.00: *loss of rental income for June 2015*

The landlord testified that the unit did not show well to prospective renters during April and May 2015 as it was "dirty." Additionally, the landlord testified that the tenant insisted on being present or nearby while showings occurred, and that during that time the smell of marijuana was ever present. The landlord argued that the unit was only able to be shown in a favourable light after the tenant vacated, and the unit had been cleaned and "aired out." For the aforementioned reasons, the landlord seeks compensation for loss of rental income for June 2015.

There is no dispute that the tenant gave proper notice to end what was at the time a month-to-month tenancy, and the landlord testified that advertising for new renters began near to the time when the tenant's notice had been received.

I note that aside from seeking this particular compensation, the principal aspects of the landlord's application concern cleaning (unit and carpet). There is no evidence that the unit was damaged and required repainting or repairs, which may have led to a delay in making it suitable for new renters. In the result, I find that the landlord has failed to meet the burden of proving that the condition of the unit, and / or the allegedly unhelpful presence of the tenant and the smell of marijuana, were sufficient to deter a prospective renter who wished to begin a tenancy on June 01, 2015. This aspect of the application is therefore dismissed.

\$50.00: *filing fee*

As the landlord has achieved a measure of success with the principal aspects of the application, I find that the landlord has also established entitlement to recovery of the filing fee.

Total entitlement: \$405.25 (\$245.00 + \$110.25 + \$50.00)

Section 72 addresses **Director's orders: fees and monetary orders**, in part:

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Conclusion

Following from all of the above, I ORDER that the landlord may withhold **\$405.25** from the tenant's pet damage deposit of **\$500.00**, and I ORDER the landlord to repay the balance of **\$94.75** to the tenant (\$500.00 - \$405.25).

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 25, 2015

Residential Tenancy Branch

