



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CARY LENTZ PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

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 she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on January 15, 2016. Based on the evidence of the Landlord, 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 represented.

Preliminary matter

During the conference call the Tenant's Advocate asked why only the male Tenant was indicated in the Landlord's application. The Landlord said as there was no written tenancy agreement and the tenancy was agreed to by the male Tenant and his mother who was not a tenant or occupant the Landlord only put the male Tenant's name on the Landlord's application. The Landlord said she believes the male Tenant was their tenant. The Tenant's Advocate said she understood but she does not agree with it as she believes the female Tenant should have been on the application as well. The Arbitrator said only having the male Tenant on the Landlord's application is the Landlord's choice and it is legitimate.

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. Is there damage and if so how much?
4. Is the Landlord entitled to compensation for 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 September 11, 2015 as a month to month tenancy. Rent was \$695.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$347.50 and prepaid rent of \$1,555.00 at the start of the tenancy. The tenancy ended on October 28, 2015. A move in condition inspection report was completed September 11, 2015 and a move out condition inspection report was completed without the Tenant on October 28, 2015. The Landlord said the Tenant phone her to end the tenancy and abandoned the rental unit on October 28, 2015. The Tenant's Advocate said the Tenant had some health issues which forced him to move out of the rental unit on October 28, 2015.

The Landlord said that the Tenants moved in on September 11, 2015 to a one bedroom unit and then were going to change to a two bedroom unit on October 1, 2015. The Tenant's mother prepaid the rent for October and November, 2015 in the amount of \$1,555.00 for the two bedroom unit. The Landlord continued to say that other tenants in the rental complex made complaints about the Tenant as soon as they moved in. These complaints were about loud noises, shouting, yelling and fighting. As a result the Landlord decided not to continue the tenancy into the 2 bedroom unit. The Landlord said she told the Tenants they were not allowed to move into the two bedroom unit. The Landlord said the tenancy continued in the one bedroom unit until the Tenants abandon the unit on October 28, 2015. The Landlord said the Tenant did phone her to say they were moving out.

The Landlord continued to say the unit was left in very poor condition and the Landlord had to do extensive repairs to get the unit back to a rentable condition. Consequently the Landlord has applied for the following compensation for damage to the unit and for unpaid rent for November, 2015 because of improper notice to end the tenancy by the Tenant.

1. Unplug the toilet	\$ 27.30	
2. Cleaning and garbage disposal	\$ 500.00	
3. Painting (Tenant's portion 50%)	\$ 300.00	
4. Painting supplies	\$ 267.18	
5. Carpet removal	\$ 250.00	
6. New carpets (Tenant's portion 30%)	\$ 716.94	
7. Window replacement	\$ 241.56	
8. Wall repairs	\$ 455.66	
9. November, 2015 loss of rental income	\$ 695.00	
10. Filing Fee	<u>\$ 50.00</u>	
Total		<u>\$3,503.64</u>

The Landlord said the receipts for the cleaning and repair work are included in the evidence package. The Landlord continued to say that she realizes the carpets were 20 years old and the unit had not been painted for over 4 years so she only charged the Tenant a portion of the full cost. The Landlord said she used 50% of the cost for the painting and 30% of the cost for the carpet.

The Landlord continued to say that because the Tenant did not give proper notice to end the tenancy she is claiming the November, 2015 rent as she was unable to rent the unit for November, 2015. The lost rental income the Landlord is claiming is \$695.00 the rent for the one bedroom unit.

Further the Landlord said she has retained the Tenant's security deposit of \$347.50 and the prepaid rent for the two bedroom unit of \$1,555.00 because she wants to apply these amounts to the costs to clean and repair the one bedroom rental unit. As a result the Landlord said her claim is \$3,503.64 less the security deposit of \$347.50 and the prepaid rent of \$1,555.00 for a total amount of \$1,601.14.

The Tenant's Advocate said the rental unit was in poor shape at the start of the tenancy and the move in condition inspection report shows wear on the counters, stains and damage to the carpet, a broken window and holes in the walls. The Tenant's Advocate said the unit was old, dirty and in poor condition on move in; therefore the Tenant should not be responsible for all the repairs made to the unit. The Tenant's Advocate said the Tenant moved out on short notice because of a health issue and although she did not see the unit she understands it could have been left unclean. The Tenant's Advocate said she thought the female tenant/occupant and her mother may have done some cleaning before moving out.

There was a discussion about the Condition Inspection Reports. The Landlord said a contract employee did the reports and she may not have understood how the reports were to be done as the move out condition inspection report indicates in the code area that the unit was in good condition. Further there are comments on the move out report that indicate the unit was dirty, there were tiles in the bathroom missing, there was a hole in a door and there were blood spatters on one wall. The Landlord called her contract employee L.R. as a witness. The Witness L.R. said she believed the unit to be in good condition except it was not clean and there were some repairs that they would have to do.

The Tenant's Advocate said there were holes in the walls at the start of the tenancy as indicated on the move in report and the tiles in the bathroom fell off the wall because of mold in the wall behind the tiles. The Tenant's Advocate said the Tenant did not damage the unit.

The Tenant's Advocate said in closing that the Landlord has no right to retain the prepaid rent on the 2 bedroom unit as there is no tenancy agreement and the Tenant did not move into the 2 bedroom unit. As well the condition reports were not done with care and the report shows the unit was damaged at the start of the tenancy. Further the

Landlord's agent indicated the unit was in good condition on the move out condition inspection report. The Tenant's Advocate said the Tenant may be responsible for cleaning costs but not for the repairs and the female tenant/occupant should have been included in the Landlord's application.

The Landlord said in closing they had to repair the unit as it was not in a state that it could be rented and they believe the Tenant is partially responsible for the damage and fully responsible for the unclean condition of the unit. The Landlord continued to say they tried to be fair by using a depreciated value on the repairs because the unit is older. As well the Landlord said they are requesting to retain the security deposit and the prepaid rent to partially cover the costs the Landlord has incurred.

Analysis

Section 26 of the Act 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 period term tenancy with written notice at least one month prior to the date that rent is payable or with the agreement of the Landlord.

The Tenant did not give the Landlord proper notice to end the tenancy and the Tenant did not have the right under the Act to withhold part or all of the rent; therefore I find the Tenant is responsible for the rent of \$695.00 for November, 2015.

For a monetary claim for damage or 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.

With regard to the Landlord's cleaning claims and pursuant to section 32 of the Act, I accept the Landlord's testimony and evidence that the unit was not left in a clean condition. Consequently I award the Landlord cleaning costs of \$500.00 and the toilet unplugging of \$27.30.

Further pursuant to Policy guideline #40 "Useful Life of Building Elements" the policy guideline indicates that the useful life of carpeting is 10 years and the useful life of interior paint is 4 years. Consequently as the Landlord said the carpet was 20 years old and the unit had not been painted for over 4 years; I find the useful life of these items had expired therefore the Tenant is not responsible for these items to be repaired. I dismiss the Landlord's claims for painting, painting supplies, carpet removal and new carpeting.

In addition the condition inspection report has holes in the walls on both the move in and move out report and the report indicates the unit was coded as in good condition. Therefore I find the Landlord has not established ground to be awarded costs for wall repairs. I dismiss the Landlord's claim of \$455.66 for wall repairs.

Further the Landlord said she fixed a window that was reported incorrectly on the condition inspection report. The Landlord said it was written on the move in report instead of the move out report. The Tenant's Advocate said the broken window is on the move in report therefore the Tenant did not break the window. As the move in condition inspection report indicates a window was broken I find that the Landlord has not proven the Tenant broke the window. Consequently I dismiss the Landlord's claim for the broken window for \$241.66.

With regard to the Landlord's request to retain the prepaid rent of \$1,555.00 paid by the Tenant for the 2 bedroom unit; I find the two bedroom rental unit is a separate tenancy. There are no tenancy agreements for either the one bedroom unit or the two bedroom units. Further the rental units are separate unit and the rental is different. Consequently the prepaid rent of \$1,555.00 is for the 2 bedroom unit and is not part of the one bedroom unit tenancy. As the Landlord refused to honor the two bedroom unit rental I find the Landlord has no claim on the prepaid rent for the 2 bedroom unit. I order the Landlord to return the Tenant's prepaid rent of \$1,555.00 forthwith. The Tenant is at leave to apply for a monetary order if the Landlord does not comply with this order.

As the Landlord has only been partially successful in this matter, I order the Landlord to bear the cost of the filing fee that is already paid. Further, I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 695.00
	Cleaning costs	<u>\$ 527.30</u>
	Subtotal:	\$1,222.30
Less:	Security Deposit	\$ 347.50
	Subtotal:	\$ 347.50
	Balance Owing	\$ 874.80

Conclusion

A Monetary Order in the amount of \$874.80 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: August 17, 2016

Residential Tenancy Branch

