



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, MNDCL-S, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for damage to the rental unit, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on August 24, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on August 05, 2022 and August 23, 2023 was sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On February 02, 2023 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via email, on February 02, 2023. As the Landlord acknowledged receiving this evidence, it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, to compensation for lost revenue, and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on June 01, 2022;
- the parties signed a fixed term tenancy agreement, the fixed term of which ended on June 01, 2023;
- the Tenant agreed to pay monthly rent of \$2,450.00 by the first day of each month;
- the Tenant paid a security deposit of \$1,225.00;
- the Tenant paid a pet damage deposit of \$1,225.00;
- on June 30, 2022 the Tenant gave the Landlord written notice of her intent to end the tenancy on August 01, 2022;
- the tenancy ended on August 01, 2022, although the Tenant stopped living in the unit prior to that date;
- a condition inspection report was completed at the beginning of the tenancy;
- a final condition inspection report was completed on August 02, 2022;
- the notes on the condition inspection report that refer to a pet odor and the carpet being dirty were added to the report after the Tenant left the joint inspection on August 02, 2022;
- the Tenant provided a forwarding address, via email, on August 09, 2022.

The Landlord is seeking compensation, in the amount of \$976.49, for “odor decontamination”. The Landlord stated that the unit smelled of pet and pet urine at the end of the tenancy and she paid this amount to have the rental unit “decontaminated”.

The Tenant stated that the unit did not smell of pet/pet urine at the end of the tenancy. The Tenant state that one room in the unit had a musty odor prior to the start of the tenancy, which is the odor the Landlord detected when the unit was inspected at the end of the tenancy.

The Landlord stated that she submitted no evidence to support her testimony that the unit smelled of pet/pet urine. The Tenant submitted two witness statements in which the authors note there was no smell in the unit at the end of the tenancy. The Tenant acknowledges that one of the authors was a relative and one was a former boyfriend.

The Landlord is seeking compensation, in the amount of \$600.00, for cleaning the carpet. The Landlord stated that carpet needed cleaning at the end of the tenancy and the Tenant stated that it did not.

The Landlord and the Tenant agree that on June 30, 2022 the Tenant asked the Landlord for permission to sublet or assign the lease and that the Landlord denied that request.

The Landlord stated that she denied the request to assign or sublet because she was looking for a long-term tenant and she wanted to ensure the person moving into the unit was a suitable tenant. She stated that she was not motivated to find her own tenant so she could increase the rent, although the person who moved into the unit agreed to pay rent of \$2,600.00.

The Landlord stated that she advertised the rental unit after receiving the Tenant's notice to end the tenancy and on July 11, 2022 or July 13, 2022 she found a person who agreed to enter into a tenancy agreement, effective August 15, 2022.

Analysis

On the basis of the undisputed evidence, I find that:

- the parties entered into a fixed term tenancy agreement, the fixed term of which began on June 30, 2022 and ended on June 01, 2023;
- the Tenant agreed to pay rent of \$2,450.00 by the first day of each month;
- the Tenant paid a security deposit of \$1,225.00; and
- the Tenant paid a pet damage deposit of \$1,225.00.

When making a claim for damages under a tenancy agreement or the Act, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or Act; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Residential Tenancy Act (Act)* stipulates that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. (Emphasis added)

I find that the Landlord has submitted insufficient evidence to establish that the rental unit smelled of pet/pet urine at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a statement from an unbiased party, that corroborates the Landlord's testimony that it had a pet odor or that refutes the Tenant's testimony that it had no pet odor. Although the witnesses who declared there was no odor in the unit at the end of the tenancy are known to the Tenant and cannot be considered unbiased, the Tenant does not bear the burden of proving there was no odor.

I have placed no weight on the condition inspection report that was completed on August 02, 2022 which refers to an odor, as that entry was made after the Tenant signed the report indicating that she agreed with the content of the report.

As the Landlord has submitted insufficient evidence to establish that the rental unit smelled of pet/pet urine at the end of the tenancy, I dismiss the claim for "decontaminating" the unit due to the presence of pet odors.

I find that the Landlord has submitted insufficient evidence to corroborate her testimony that the carpets were dirty at the end of the tenancy or to refute the Tenant's testimony that they were not dirty. I have placed no weight on the condition inspection report that was completed on August 02, 2022 which indicates that the carpet in the bedroom is dirty, as that entry was made after the Tenant signed the report indicating that she agreed with the content of the report.

I have viewed the "before and after" photographs of the carpet submitted in evidence by the Landlord and find them to be of little evidentiary value. I find that those photographs are of poor quality and, in my view, look quite similar. I find they do not establish that the carpets were dirty at the end of the tenancy.

I have viewed the photograph of the dirty water that the Landlord stated was drained from the machine after she cleaned the carpet with a rented carpet cleaner. While I accept that the water is dirty, I cannot conclude that this establishes the carpet was not in reasonably clean condition at the end of the tenancy. On the basis of the entry on the initial condition inspection report which indicates the carpet in the bedroom is faded, I

find it reasonable to conclude that the carpet is quite old. I therefore find it entirely possible that the water would be dirty regardless of how many times the carpet was cleaned.

As the Landlord has submitted insufficient evidence to establish that the carpet was not in reasonably clean condition at the end of the tenancy, I dismiss the claim for cleaning the carpet.

On the basis of the undisputed evidence, I find that on June 30, 2022 the Tenant gave the Landlord written notice of her intent to end the tenancy on August 01, 2022 and that the Tenant gave up possession of the rental unit on August 01, 2022. I therefore find that the tenancy ended, pursuant to section 44(1)(d) of the *Act*, when the rental unit was vacated on August 01, 2022.

Section 45(2) of the *Act* allows a tenant to end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that the Tenant breached section 45(2) of the *Act* when she gave notice to end the tenancy on a day that is earlier than the date specified in the tenancy agreement as the end of the tenancy.

On the basis of the undisputed evidence, I find that the Landlord experienced a loss of revenue for the period between August 01, 2022 and August 14, 2022, and that she would not have experienced this lost revenue if the Tenant had not ended the tenancy prematurely. In some circumstances, a landlord would be entitled to compensation for that lost revenue.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. In these circumstances, I find that the Landlord did not take reasonable steps to minimize the lost revenue she experienced.

On the basis of the undisputed evidence, I find that the Tenant asked for permission to sublet or assign the tenancy and that the Landlord denied that request. I find that if the Landlord had given the Tenant the opportunity to assign the tenancy or sublet the unit, it is entirely possible that the Tenant would have found a third party to move into the unit, and the Landlord would not have experienced any loss in revenue.

Section 34(2) of the *Act* stipulates that if a fixed term tenancy has 6 months or more remaining in the term, the landlord must not unreasonably withhold consent to assign a tenancy agreement or sublet a rental unit.

I find the Landlord's explanation that she denied the request to assign/sublet because she was looking for a long-term tenancy is not reasonable. There were ten months left in the fixed term of the tenancy and the Landlord could have reasonably expected the assignment or sublet to last 10 months. That would have left the Landlord in the same position as if the Tenant had continued living in the unit for the duration of the fixed term of the tenancy.

I find the Landlord's explanation that she denied the request to assign/sublet because she wanted to ensure the person moving into the unit was a suitable tenant is not reasonable. The Landlord could have agreed to sublet/assignment on the condition that she had the right to approve of the new occupant.

As the Landlord did not take reasonable steps to mitigate the lost revenue experienced, I find the Landlord is not entitled to compensation for lost revenue.

I find that the Landlord has failed to establish the merit of the Application for Dispute Resolution has merit and I dismiss the claim to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Application for Dispute Resolution is dismissed, without leave to reapply.

As the Landlord has failed to establish a right to keep the security/pet damage deposits, I find that must be returned to the Tenant. I therefore grant the Tenant a monetary Order for \$2,450.00. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: February 15, 2023

Residential Tenancy Branch