



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: MNR, MND, MNSD and FF

Introduction

These applications were brought by both the landlord and the tenant.

By application of February 13, 2009, the landlord sought a Monetary Order unpaid rent, damage to the rental unit, recovery of the filing fee and authorization to retain the security deposit in set off.

By application of April 20, 2009, the tenant sought a Monetary Order for a retroactive rent reduction for deficiencies in the rental unit not remedied by the landlord and return of her security deposit.

Issues to be Decided

The landlord's application requires a decision on whether the landlord is entitled to a Monetary Order for the unpaid rent and damages and filing fee for this proceeding, and authorization to retain the security deposit in set off.

The tenant's application requires a decision on whether she is entitled to return of a portion of her rent for the deficiencies in the rental unit.

Background, Evidence and Analysis

This tenancy began July 1, 2006 to January 31, 2009. Rent was \$500 per month and the landlord holds a security deposit of \$250 paid on July 1, 2009.

During the hearing, the landlord gave uncontested evidence that the tenant had given notice on January 31, 2009 that she was moving out on that day. The landlord claims loss of rent for February.

The rental unit remained vacant in February and, in fact, remained so to the time of the hearing because, according to the landlord and supported by photographic evidence, it required extensive repairs.

The landlord gave evidence, contested by the tenant, that the living room and hall carpeting was new at the beginning of the tenancy and was so stained that it could not be cleaned. She said other carpeting, also badly stained had to be replaced but it was somewhat older.

The landlord also pointed to photographs of heavy build up of mold in the rental unit and particularly in the bathroom and around windows. The tenant stated that the mold been the subject of a number of her requests for repairs to the landlord and had resulted from a leak in the unit above and the fact that there was no exhaust fan in the bathroom. The landlord stated the damage was exacerbated by the tenant keeping the rental unit heated to 80 degrees F.

In total, the landlord requested a Monetary for \$3,500 for loss of rent and the repairs.

The tenant submitted a letter she had presented to the landlord on January 13, 2009 and a diary of complaints she had made to the landlord from the beginning of the tenancy for repairs including replacement of carpets, shorting out light fixtures, repair of water damage to the bathroom walls and replacement faucets, etc.

In total, the tenant sought compensation of \$7,750.

Analysis

As to the landlord's application, I find that the tenant failed to provide one full month's written notice as required by section 45 of the *Act* and the landlord is entitled to the loss of rent for February.

As to the damages, in assessing a monetary award, residential policy guidelines instruct that I must be satisfied that damages occurred, that they were at the hands of the tenant, and that the amount claimed is reasonable and proven.

In this case, on the basis of photographic evidence, I find that there is substantial damage. However, the landlord has provided no receipts or estimates to substantiate the costs of repairs many of which remained undone three months after the end of the tenancy.

The landlord said she had been friends with the tenant and had been in the rental unit a number of times as a guest but had made only passing reference to the condition of the rental unit when matters were current.

In addition, neither party has submitted copies of move-in or move-out condition inspection reports to permit a comparative analysis.

The tenant claims much of the damage was evident at the beginning of the tenancy was not repaired despite her requests, but the only documentary evidence of that is her letter written two weeks before she left the tenancy.

The tenant did not seek dispute resolution until nearly three months after the tenancy ended and she remained in the rental for two and one-half years without submitting a written request to the landlord for repairs, suggesting some degree of acceptance of the status quo.

Accordingly, with consistently contradictory oral evidence of the parties and the lack of documentary evidence to establish costs, I cannot determine with any certainty which party is more responsible. Therefore, I make no findings with respect to the damages to the rental unit and dismiss the claims of both parties..

However, as noted, the tenant is clearly responsible for the February rent and I find that the tenant owes the landlord, including authorization to retain the security deposit in set off an amount calculated as follows:

February rent	\$500.00
Less retained security deposit	- 250.00
Less interest (Sept. 18/07 to date)	- 8.21
TOTAL	\$241.79

I find that each of the parties should remain responsible their own filing fee.

Conclusion

Thus, the landlord is authorized to retain the security deposit and interest and, in addition, the landlords' copy of this decision is accompanied by a Monetary Order for \$241.79, enforceable through the Provincial Court of British Columbia, for service on the tenant.

April 27, 2009

Dispute Resolution Officer