



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, OPB, MND, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for compensation for damages to the rental unit and to recover the filing fee for this proceeding. The Landlord also applied to keep the Tenant's security deposit. The Landlord claimed that the Tenant has moved out of the rental unit and as a result, he abandoned his application for an Order of Possession.

The Landlord served the Tenant in person on or about March 10, 2009 with a copy of the Application and Notice of Hearing. The Landlord said he was accompanied by a witness at that time. I find that the Tenant was served as required by s. 89 of the Act and the hearing proceeded in her absence.

Issues(s) to be Decided

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

Background and Evidence

This tenancy started on July 1, 2006 and ended on or about March 31, 2009. Rent was \$880.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$425.00 at the beginning of the tenancy. The Landlord claims that the Tenant is in arrears of rent in the amount of \$380.00 for February, 2009 and has not paid rent for March, 2009.

The Landlord said that at the end of the tenancy, the Tenant advised him she had put all the belongings she wanted into one room and that he could dispose of the rest. The Landlord said he put the Tenant's belongings in storage and gave what could be recycled to charity thrift stores. The Landlord said he could not do a condition inspection report with the Tenant at the end of the tenancy because the Tenant was in the hospital. He claimed, however, that a condition inspection report was prepared at the beginning of the tenancy.

The Landlord claims that pursuant an addendum to the tenancy agreement, the Tenant was not supposed to smoke in the rental unit but he discovered at the end of the tenancy that a strong smell of cigarette smoke permeated the rental unit. The Landlord

said that as a result of the Tenant smoking, the walls had to be treated with a special primer and re-painted.

The Landlord said he consented in writing in August, 2008 to the Tenant having one cat but at the end of the tenancy discovered she had 10 of them. The Landlord also said that the Tenant's cats urinated on the carpets in every room and that the smell of urine was very strong. He claimed that the Tenant also had burn holes from cigarettes in the carpets in each of the carpeted rooms as well as ground-in debris. The Landlord argued that the carpet could not be salvaged and had to be removed. The Landlord said he has not replaced the carpet but that he did get an estimate from End of the Roll that it would cost \$2,085.98 to have new carpeting installed.

The Landlord admitted that the carpets were not new at the beginning of the tenancy but argued that they had been cleaned and were in good condition with no stains or burn marks. The Landlord provided faxed copies of photographs which he said he took of the rental unit between April 7 and April 11, 2009 that showed the condition of the rental unit. As nothing could be seen in the faxed copies of the photographs, the Landlord was advised to submit the original photographs to the Residential Tenancy Branch. As of the date of this decision, the Landlord had still not provided the original copies of the photographs.

Analysis

In the absence of any evidence from the Tenant to the contrary, I find that there are rent arrears in the total amount of **\$1,260.00** and award the Landlord that amount.

Section 37 of the Act says that when a Tenant vacates a rental unit, she must leave it reasonably clean and undamaged except for reasonable wear and tear. I find that the Tenant smoked in the rental unit in breach of a term of the tenancy agreement and is therefore liable to compensate the Landlord for his reasonable costs of removing smoke stains and odour from the rental unit. Based on the receipts provided by the Landlord, I find that he is entitled to recover the amount of **\$368.24** for painting supplies.

The Landlord also claimed that he also had to repair various holes in the walls and replace trim. Based on the receipts provided by the Landlord for these expenses, I find that he is entitled to recover an additional amount of **\$79.82**. I find that the Landlord is not entitled to recover amounts for an invoice in the amount of 32.92 as contains items for miscellaneous repairs and supplies for which there was no evidence of damage by the Tenant.

With respect to the carpets in the rental unit, I note that the move in condition inspection report shows that there were carpet stains in the living room and bedrooms at the



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beginning of the tenancy. The Landlord said he did not know how old the carpet was at the beginning of the tenancy because he had just purchased the property. Notwithstanding some pre-existing stains to the carpet, I find that the Tenant contributed to further damage to the extent that the carpet was unsalvageable. Given that the carpet was not new and had some pre-existing damages at the beginning of the tenancy, I do not award the Landlord the replacement cost of the carpet but rather the depreciated value of the damaged carpet. Assuming that the cost of a new carpet installed is \$2,098.85, that the lifetime of a carpet is 15 years and that the estimated age of the carpet in the rental unit is 7 years old, I award the Landlord **\$1,044.93** (or ½ the value of the carpet).

As the Landlord has been successful in this matter, I also find that he is entitled to recover his **\$50.00** filing fee for this proceeding. I order the Landlord pursuant to s. 38(4), 62(3) and 72 of the Act to keep the Tenant's security deposit plus accrued interest in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

Rent arrears:	\$1,260.00
Painting expenses:	\$368.24
Other supplies:	\$79.82
Damaged carpet:	\$1,044.93
Filing fee:	<u>\$50.00</u>
Subtotal:	\$2,802.99
Less: Security deposit:	(\$425.00)
Accrued interest:	<u>(\$13.97)</u>
Balance owing:	\$2,364.02

Conclusion

A monetary order in the amount of **\$2,364.02** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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 *Residential Tenancy Act*.

Dated: May 12, 2009.

Dispute Resolution Officer