



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for a loss of rental income, for cleaning and repairs to the rental unit, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlord said she received a forwarding address from only one of two of the tenants named on the tenancy agreement. The Landlord said that prior to sending the hearing packages in this matter to the Tenant's forwarding address, she contacted the telephone number also given by the Tenant to confirm that she could send the hearing package to that address because the Tenant was working in France. The Landlord said she was told to send the documents to that address and as a result, she served this Tenant by registered mail on September 17, 2009 with the Application and Notice of Hearing. According to the Canada Post online tracking system, a notification card was left for the Tenant on September 21, 2009 but no one picked up the hearing package. I find that the Tenant was served as required by s. 89 of the Act and the hearing proceeded in his absence.

As the other tenant on the tenancy agreement was not served with the Landlord's application, the application and style of cause are amended to remove him as a Respondent in this matter.

Issues(s) to be Decided

1. Is the Landlord entitled to compensation for damages and if so, how much?
2. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on May 1, 2006 and ended on August 31, 2009. Rent was \$829.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$400.00 at the beginning of the tenancy.

The Landlord said that she made two appointments with the Tenant's co-tenant to do a move out condition inspection report but he did not attend on either of those occasions.

Consequently, the Landlord did a move out condition inspection report without the Tenants on September 4, 2009. The Landlord claimed that the rental unit was not cleaned and had damages at the end of the tenancy. As a result, the Landlord said she incurred expenses for general cleaning, carpet cleaning, repairs and painting.

The Landlord also claimed that due to the need to do cleaning and repairs, the rental unit could not be re-rented until November 1, 2009 and as a result, the Landlord lost rental income for the month of October 2009. The Landlord said the Tenant also had outstanding strata fines of \$100.00 and unpaid rent of \$2.00 at the end of the tenancy.

Analysis

Section 37 of the Act says that at the end of a tenancy, the Tenant must leave the rental unit clean and undamaged except for reasonable wear and tear. RTB Policy Guideline #1 defines "reasonable wear and tear" as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion."

Based on the move in condition inspection report provided by the Landlord, there were some pre-existing damages to some of the walls in the rental unit at the beginning of the tenancy. The Landlord also admitted that the rental unit had not been painted at the beginning of the tenancy. RTB Policy Guideline #1 at p. 4 states that a Landlord is responsible for painting the interior of the rental unit at reasonable intervals. Although the Landlord argued that the Tenant caused additional damage to the walls from stickers for example, I find that this kind of damage was made to walls that were already in fair to poor condition at the beginning of the tenancy (3.5 years prior). Consequently I find that the Tenant is not responsible for the cost of re-painting the interior of the rental unit and that part of the Landlord's application is dismissed.

The Landlord also claimed that there were a number of other damages that had to be repaired such as replacing a damaged blind, replacing 3 light fixtures that were missing covers, repairing a sliding screen door and reinstalling some closet doors as well as replacing a refrigerator door handle and a dead bolt lock. The move in condition inspection report states that the screen door needed to be replaced at the beginning of the tenancy and therefore, I find that it was already suffering the effects of wear and tear and the Tenant should not be responsible for repairing it. I also find that there was a damaged Venetian blind at the beginning of the tenancy and that the Tenant should not be responsible for replacing it. However, I find that the Tenant is responsible for the cost to repair the balance of these items and therefore award the Landlord one-half of the amount claimed or **\$150.00**.

Residential Tenancy Branch
Ministry of Housing and Social Development

Similarly, I find that there is insufficient evidence to conclude that the Tenant should be responsible for a toilet repair. The Landlord admitted that she had no knowledge if the toilet was damaged due to some act or neglect of the Tenant but argued that it did not work at the end of the tenancy and the Tenant had failed to report the problem. Given the nature of the repair, however, (ie. the replacement of a flush valve and flapper), I find that this damage was more likely the result of wear and tear than due to some act or neglect of the Tenant and as a result, this part of the Landlord's claim is dismissed.

I find however, that the Tenant did not leave the rental unit reasonably clean at the end of the tenancy and as a result, the Landlord is entitled to recover **\$425.00** for general cleaning and **\$93.45** for carpet cleaning. I also find that the Landlord is entitled to recover **\$100.00** in unpaid Strata fines, however, I find that there is no evidence that the Tenant has arrears of rent of \$2.00 and that part of the Landlord's claim is dismissed.

Given that I have found (above) that the Tenant was responsible for only a few of the repairs but not for the majority and that the Tenant was not responsible for re-painting, I find that there are no grounds for holding the Tenant responsible for a loss of rental income for October 2009 and that part of the Landlord's claim is dismissed.

I find that the Landlord is entitled to recover her **\$50.00** filing fee for this proceeding as well as her expenses for registered mail of **\$9.45**. I order the Landlord pursuant to s. 38 of the Act to keep the Tenant's security deposit in partial payment of the damage award. The Landlord will receive a monetary order for the balance owing as follows:

Repairs:	\$150.00
General cleaning:	\$425.00
Carpet cleaning:	\$93.45
Strata fines:	\$100.00
Filing fee:	\$50.00
Registered mail:	<u>\$9.45</u>
Subtotal:	\$827.90
Less: Security deposit:	(\$400.00)
Accrued interest:	<u>(\$13.62)</u>
Balance owing:	\$414.28

Conclusion

A monetary order in the amount of **\$414.28** 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



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

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: November 25, 2009.

Dispute Resolution Officer