



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to the landlord's application for dispute resolution seeking:

1. A monetary order for damage, compensation and unpaid rent;
2. An Order allowing the landlord to retain the security deposit; and
3. Recovery of the filing fee.

Both parties appeared at the hearing of this matter and gave evidence under oath.

Issue(s) to be Decided

Is the landlord entitled to the orders sought?

Background and Evidence

The landlord testified that this tenancy ended on October 15, 2010 by way of a successful direct request application in which the landlord was awarded an Order of Possession based on a 10 day Notice to End Tenancy given for unpaid rent and a monetary award to recover the unpaid rent.

The landlord now seeks recover of fees and charges incurred as follows:

Cleaning Carpets	\$196.00
Strata Fines	200.00
Rent for 3 days (late move-out)	120.00
Garbage removal and cleaning	234.00
Purchase of new light bulbs throughout	204.86
Purchase of a new mail box key	42.36
Flea spraying	364.00
Replace blinds	78.30
Late rent payment charges for June 2009, July 2009, August 2009, November 2009, July 2010 and August 2010 @ \$25.00 each	150.00
"Rentalsman's charge before"	50.00
Recovery of filing fee for this application	50.00
Total	\$1689.52

The landlord says he is holding a \$550.00 security deposit paid April 20, 2009 which he seeks to retain in partial satisfaction of the claim set out above.

The landlord says the tenant did not shampoo the carpets when she vacated. The landlord says the strata fines were imposed by the Strata Corporation against the owner of the landlord because the tenant was throwing cigarette butts off her balcony. The landlord says the tenant overstayed in the rental unit for 3 days past the date on which the Order of Possession stated she was to leave. The landlord now claims \$120.00 for rent for that period. The landlord says the clean up and garbage removal costs were incurred because the tenant left broken furniture and garbage near the garbage bin and he was forced to load it up and take it to the dump himself. The landlord says he knows it was the tenant's furnishings because he had seen it in her rental unit previously. The landlord says almost every single light bulb in the rental unit was burnt out and had to be replaced. The landlord says the tenant did not return the mailbox key in time for the new tenants to receive it and he was forced to have a new key cut for the new tenants. The landlord says the rental unit had not problems with fleas at the start of this tenancy as pets are not allowed. The landlord says after the new tenants moved in they discovered a flea infestation and flea spraying was required. The landlord says the tenant had a pet contrary to the tenancy agreement. The landlord says the tenant broke the blinds in the rental unit and those needed to be replaced. The landlord says the tenant was frequently late paying rent and the rental agreement allows for a \$25.00 fee for each late payment. The landlord says he was not able to claim late payment fees with his direct request application for an Order of Possession and to collect the rent and he is doing so now. Finally the landlord says he was also unable to claim recovery

of the filing fee he paid for the previous proceeding he made with respect to this tenancy by way of direct request. The landlord now claims this fee which he was described as the "Rentalsman's charge before".

The tenant agrees she did not clean the carpets, she did not replace the light bulbs and she did not return the mail key at the end of the tenancy because her parents had the key, the tenant also agrees that she broke the blinds. The tenant disputes the strata fines saying that she did not throw cigarette butts off her balcony. The tenant pointed out that the rental unit is very near a nightclub and this is likely where the butts came from. The tenant disputes the costs of flea spraying saying that she never had a pet. The tenant says the landlord allowed her to stay on for 3 days extra in the rental unit but she wasn't aware she would have to pay for those 3 extra days. The tenant disagrees with the cleaning and garbage removal costs. The tenant says the garbage and furniture that was left at the rental unit garbage container was not hers.

Analysis

The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. In this case the burden of proof is on the landlord.

The tenant agrees she did not clean carpets, replaces bulbs, return the mailbox key in a timely fashion and agrees that she stayed in the rental unit an extra 3 days. I will therefore allow these claims, as she has agreed that she broke the blinds, I will allow this claim as well all together totalling \$641.52.

With respect to the strata fine fees while I do not doubt that these fines were levied by the strata corporation against the strata unit. The landlord has filed a letter in the evidence dated August 8, 2009 from the Property Management company written on behalf of the strata corporation stating in part that "The Strata Agent has spoke to [the tenant's] guests and they have admitted to throwing the butts over the balcony railing" however, not only is this letter written some time ago, no evidence has been supplied to show that the fines were levied following an administratively fair process whereby the tenant had the right to see the evidence against her, make full answer in defence and cross examination of the "guests" who purportedly advised the Strata Agent that they were throwing butts off her balcony. I therefore give no weight to this evidence and find that the landlord has failed to bring sufficient evidence to prove that the tenant or her guests threw cigarette butts off the balcony. In fact, it is reasonable and probable that

the cigarette butts may well have come from patrons of the nightclub nearby. I therefore dismiss the claim for recovery of strata fines in the sum of \$200.00.

With respect to the claim for flea spraying the tenant says she did not have a pet and the landlord has failed to prove that she did have a pet. This claim is therefore dismissed.

With respect to the claim for garbage removal of items found around the dumpster the tenant says the garbage and furnishings that the landlord says were hers were not hers. The landlord has failed to bring sufficient evidence to show that these goods did belong to the tenant. This claim is therefore dismissed.

With respect to the late rental payment charges, while the signed Tenancy Agreement does contain a clause allowing for non-sufficient funds fees, it does not contain a clause allowing for late rental payment fees. This claim is therefore dismissed.

I decline to award recovery of the filing fee from the previous proceeding as applicants are unable to recover the filing fee for a direct request proceeding.

As the landlord has had some success in this application, I will allow him to recover half of the filing fee paid for this application in the sum of \$25.00.

In conclusion I will allow the following claim and direct that this award be partially satisfied by allowing the landlord to retain the security deposit:

Cleaning Carpets	\$196.00
Rent for 3 days (late move-out)	120.00
Purchase of new light bulbs throughout	204.86
Purchase of a new mail box key	42.36
Replace blinds	78.30
Recovery of filing fee for this application	25.00
Total	\$666.52
Less security deposit (no interest accrued)	-550.00
Balance due and owing by tenant to landlord	\$116.52

Conclusion

The landlord is provided with an Order in the above terms. The tenant must be served with that Order. Should the tenant not comply with the Order by paying the sum owed,

the landlord may enforce the Order as an Order of the Provincial 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*.