



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding E Y PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for damage to the unit, site or property, for compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord's Agent said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on January 23, 2013. Based on the evidence of the Landlord's Agent, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Are there damages to the unit and if so how much?
4. Is the Landlord entitled to compensation for the damage and if so how much?
5. Are there other losses or damages and is the Landlord entitled to compensation?
6. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on March 1, 2012 as a fixed term tenancy with an expiry date of February 28, 2013. Rent was \$910.00 as well as a monthly fee of \$30.00 for parking and \$10.00 fee for storage payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$455.00 and a pet deposit of \$455.00 on, March 14, 2012 and a \$50.00 key deposit. The Tenant said they gave the Landlord written notice on April 20, 2012 that they moved out of the rental unit at the end of April, 2012. The Landlord said the Tenant moved out of the rental unit on April 29, 2012. The Landlord continued to say they completed a condition inspection report for both move in on February 20, 2012 and move out on April 29, 2012.

The Landlord said that the Tenant breached the fixed term tenancy agreement by moving out of the rental unit before the expiry date in the tenancy agreement which was February 28, 2013. The Landlord continued to say that they advertised the unit on line in three websites and advertised in two publications from May 7, 2012 to June 20, 2012 in order to re-rent the unit as soon as possible. The Landlord said the unit was rented on July 10, 2012. Since the end of the tenancy the Landlord said they have been trying to communicate with the Tenants to resolve the dispute over unpaid rent and lost rental income, but to date they have been unsuccessful so they applied for dispute resolution.

The Landlord said they are requesting lost rental income for May and June, 2012 in the amount of \$1,820.00, \$100.00 for carpet cleaning, \$300.00 for liquidated damages to cover the costs of re-renting the unit, \$30.00 parking fee for May, 2012 and the \$10.00 storage fee for May, 2012. The Landlord said their total monetary claim for lost rent and damages is \$2,260.00.

The Landlord said they have supported their application with a copy of the tenancy agreement which confirms the tenancy as a fixed term with an expiry date of February, 28, 2013. As well the tenancy agreement confirms the liquidated damages of \$300.00 and the parking and storage fees. The Landlord also included a receipt for the carpet cleaning and indicated the Tenants agreed to have the carpets cleaned on the move out condition inspection report.

The Tenant said she agreed that they owed the May, 2012, rent of \$910.00, the parking and storage fees of \$40.00 for May, 2012 and the liquidated damages of \$300.00. The Tenant continued to say that they were only in the unit for 6 weeks so she did not think the carpets needed cleaning, but the Tenant did agree that the other Tenant agreed to the carpet cleaning on the move out report. The Tenant said that she did not agree that they should owe the June, 2012 rent as they gave the Landlord one month written notice and in that notice only the May rent was mentioned as owing. As well the Tenant said the Landlord signed that agreement. The Tenant said the Landlord should keep the security and pet deposit as full settlement of the money the Tenants owe the Landlord.

The Landlord said the Late Vacate Notice did end the tenancy and the agreement does only stated the May, 2012 rent is payable, but the Landlord said they covered the terms of the tenancy agreement with the Tenants verbally and the Tenants knew that they would be responsible for rent up to February, 2013. The female Tenant said the male Tenant did the move out inspection with the Landlord so she did not know what was said.

In closing the Landlord said the tenancy agreement covers the June, 2012 rent and their other claims are agreed to by the Tenant.

The Tenant said in closing that their notice to end the tenancy (the Late Vacate Notice) dated April 20, 2012 was one month written notice that was accepted by the Landlord and it only stated the May, 2012 rent was payable, so she is not responsible for the June, 2012 rent of \$910.00.

Analysis

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45 of the Act says a Tenant may end a fixed term tenancy not earlier than the date specified in the tenancy agreement and it must be with written notice at least one month prior to the date that rent is payable or **with the agreement of the Landlord**.

I find the written notice (the Late Vacate Notice) given to the Landlord by the Tenants on April 20, 2012 constitutes a mutual agreement to end the tenancy and the rent payable in that agreement is for May, 2012 only; therefore I find the Tenant has established grounds to show that the June, 2012 rent is not the Tenant's responsibility. I find for the Landlord for the May, 2012 rent of \$910.00, for the parking fee of \$30.00 and the storage fee of \$10.00. As well I find the Landlord has provided sufficient evidence to show the liquidated damages were a valid estimate of costs to rent the unit and the Tenants agreed to the liquidated damages of \$300.00 if they breached the tenancy agreement. I award the Landlord the \$300.00 in liquidated damages.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

The Landlord's agent proved the carpet cleaning loss existed and she verified the losses by providing receipts for the claims that the Landlord has made. I accept the Landlord's Agent's testimony that these damages and losses were caused by the Tenant and the costs were reasonable amounts to clean the carpets. Consequently, I find the Landlord's Agent has established grounds to be awarded the costs for carpet cleaning of \$100.00.

As the Landlords have been partially successful in this matter, they are also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security and pet deposits in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Lost rental income	\$ 910.00
	Parking and storage fees	\$ 40.00
	Liquidated damages	\$ 300.00
	Carpet cleaning	\$ 100.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$ 1,400.00
Less:	Security Deposit	\$ 455.00
	Pet Deposit	\$ 455.00
	Key Deposit	\$ 50.00
	Laundry credit	.95
	Subtotal:	\$ 960.95
	Balance Owing	\$ 439.05

Conclusion

A Monetary Order in the amount of \$439.05 has been issued to the Landlord. A copy of the Order must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) 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*.

Dated: April 15, 2013

Residential Tenancy Branch