



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

The landlord applies for a monetary award for rent, cleaning and repair charges.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Did the tenants give a valid Notice to end this tenancy effective June 30, 2018? Did they leave the premises reasonably clean and free of damage but for reasonable wear and tear? If not, what is appropriate compensation?

Background and Evidence

The rental unit is a two bedroom apartment in a 56 unit apartment building. There is a written tenancy agreement. The tenancy started April 1, 2014. They vacated on June 30, 2018. The most current monthly rent was \$1335.00. The landlord holds a \$615.00 security deposit.

In late May 2018, while they were out of the country, the tenants send a text to O, the building manager, informing her “please accept this text as my one month move out notice, unit XXX-XXXX [redacted]. Our last day will be June 30, 2018. Thanks.” Another message, tagged to the first, read, “Please confirm when you see this message.”

They say that this was proper notice to end the tenancy June 30 and so they should not be responsible for July rent.

The tenants' phone record shows O responded with, "OK."

The landlord representative Mr. R.C. says the first part of the message, the notice part, was not received by O and he produces what is said to be her phone record of the text. O did not attend the hearing or otherwise give evidence. Mr. R.C. says the landlord advertised for new tenants starting July 4 and found new tenants starting in August.

He says the tenants failed to clean the carpets and drapes as required by the tenancy agreement, that the unit required \$150.00 worth of cleaning and \$150.00 of painting.

The tenants say they left the unit clean and produce pictures. They say that if there were dings or dents in the walls they were just minor. They acknowledge they were responsible for cleaning the carpets and drapes and are willing to pay for that work.

Analysis

Rent

There was discussion at hearing about what form of "writing" a notice to end a tenancy must be in. However, I find that the tenants' text was not an effective notice because it did not comply with the requirements of ss. 45 and 52 of the *Residential Tenancy Act* (the "*Act*").

The relevant portions of s. 45 provide:

- (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
 - (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

* * *

- (4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

Section 52 states:

Form and content of notice to end tenancy

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
 - (e) when given by a landlord, be in the approved form.

The tenants' version of the text in question does not give the proper address of the rental unit. While that address would arguably be obvious in this case, obviousness does not exempt a landlord or a tenant from this mandatory requirement. In any event, the text was not signed by the tenants either physically or by electronic signature as contemplate by the *Electronic Transactions Act*, S.B.C. 2011, c. 10. Again, s. 52, above, makes a signature a mandatory requirement of any notice to end a tenancy.

For these reasons the tenants' text message was not an effective notice to end the tenancy on June 30. It follows that on July 1 the tenants owed the July rent in full. The landlord did not recover that loss by finding a new tenant for July and so the tenants owe the \$1335.00 claimed.

Carpet and Drape Cleaning

The tenants acknowledge each of these claims. I award the landlord \$115.00 for drape cleaning as claimed.

I decline to award the landlord the cost of carpet cleaning. The tenants were responsible to clean the carpets at the end of the tenancy and they have breached that term of the agreement, however the landlord has not suffered loss. The carpets were never cleaned; they were replaced.

General Cleaning and Painting

I disallow these items. Section 37(2)(a) of the *Act* sets the standard at which a tenant must leave a premises. The tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. The landlord has not provided objective evidence to show that the premises were otherwise than reasonably clean and free of damage but for reasonable wear and tear. The tenants' photos indicate that standard was met.

Conclusion

The landlord is entitled to a monetary award of \$1440.00 plus recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$615.00 security deposit in reduction of the amount awarded. It will have a monetary order against the tenants for the remainder of \$835.00.

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: October 17, 2018

Residential Tenancy Branch