



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: MNR, MND, MNDC, MNSD, & FF

Introduction:

This hearing dealt with an application by the landlord for a monetary claim due to breach of the tenancy agreement by the tenants and for costs to clean the rental unit.

Both parties appeared for the hearing and were provided the opportunity to be heard and respond to the evidence of the other party.

Issues to be Determined:

Has the landlord established a monetary claim due to breach of contract by the tenants and for costs to clean the rental unit?

Background and Evidence:

This tenancy began on October 1, 2007 for a fixed term ending September 30, 2008 for the monthly rent of \$1,000.00. The tenants also paid a security deposit of \$500.00 and a pet deposit of \$250.00 on October 1, 2007.

The tenants gave notice that they would be ending their tenancy early in June 2008 effective August 31, 2008, about one month early. The landlord responded in an e-mail dated June 19, 2008 indicating that he would agree to end the fixed term tenancy upon receipt of the rent for July and August 2008. The tenants provided the landlord with another letter dated July 24, 2008 providing their forwarding address and a time to conduct the move out condition inspection on August 31, 2008.

A copy of the move in and move out condition inspection report shows that both parties signed the document and it was noted that the carpets were cleaned by a rented carpet cleaner. The document indicates that the tenants were to provide a receipt of the rental of the carpet cleaner. The document does not indicate any damage to the rental unit.

The landlord provided receipts of the advertisements for the rental unit beginning approximately July 14, 2008 through to September 10, 2008. The landlord was successful in renting the unit as of September 15, 2008.

The landlord determined that the tenants were responsible for the costs of advertising and cutting the lawn in September 2008 and issued the tenants' a cheque for \$548.70 representing the return of their security and pet deposits, plus interest less the cost of

advertising and cutting the lawn. In this letter the landlord indicated that the cost of advertising was \$171.64 and lawn cutting was \$40.00.

The tenants did not agree to these deductions and filed an application for the return of their security and pet deposit under file #724907. In the decision of October 6, 2008 the tenants received a monetary Order for the sum of \$1,013.28 pursuant to section 38(6) of the *Act* on the basis that the landlord failed to comply with section 38(1) of the *Act*.

The landlord is seeking a monetary claim in this application comprised of the cost for advertising of \$136.19, carpet cleaning of \$106.00, costs of landlord's agent to show and rent the unit of \$130.00, lawn cutting of \$55.00, loss of rental revenue for 15 days in September 2008 for \$500.00, recovery of costs to serve documents for this application for \$33.60 plus the recovery of the \$50.00 filing fee paid for this application.

Analysis:

I grant the landlord's application in part. I find that the tenants agreed as part of ending the tenancy early that they would be responsible for the cost of finding a new tenant. This is a reasonable cost associated with ending the fixed term lease. The tenants; however, were under the impression that it was the landlord's responsibility to mitigate their loss and cover this expense. I do not agree. The tenants were breaching the agreement and I find they are responsible for reasonable costs associated with finding a new tenant and mitigating the landlord's loss.

In some circumstances parties agree at the beginning of a fixed term contract what the reasonable cost to the landlord will be if the tenant breaches the fixed term lease. This estimate is called liquidated damages. The parties did not agree to a pre-estimate of the cost of breaching the contract. I find that the landlord's claim for advertising costs for the sum of \$136.19 and the cost of \$130.00 for the agent to show the rental unit, are a reasonable cost the landlord suffered due to the tenants' breach of the tenancy agreement.

I do not accept the landlord's claim for lost revenue from September 1, 2008 to September 15, 2008. It is clear from the landlord's e-mail of June 19, 2008 that if he was in agreement to accept the end of the tenancy effective August 31, 2008 and did not, in writing, at the end of the tenancy give any expectation that any loss after this date would be a cost against the tenants. I find that the landlord is reasonably compensated for the breach of the tenancy agreement for the sum of \$266.00.

I also do not accept the landlord's application for the cost of carpet cleaning. Although I acknowledge that the tenants were to provide a receipt of the carpet cleaner rental, there is no evidence before me to establish that the landlord had to pay for a further cleaning of the carpets. I accept from the move out condition inspection report that it was accepted that the carpets were cleaned. The landlord has failed to establish that the job was not reasonable and that the additional expense of \$106.00 was necessary. Regarding the expense of cutting the lawn I find that this is a reasonable expense. On the balance of probabilities, and in consideration of the photographs submitted by the parties, I find that the lawn was not adequately cut as required by the tenancy

agreement. I find that the expense claimed by the landlord for \$55.00 is a reasonable claim.

Although the landlord has requested recovery of costs to serve the tenants documents related to this dispute there is no provision to grant this request. This is the cost of litigation and pursuing an application. However, I do accept the landlord's request to recover the \$50.00 filling fee for this application which is permitted under the *Act*.

I find that the landlord has established a total monetary claim for the sum of \$371.00.

Conclusion:

I grant the landlord's application in part. I grant the landlord a monetary Order for the sum of **\$371.00**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated December 31, 2008.

Dispute Resolution Officer