



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 matter dealt with an application by the Landlord for a Monetary Order for unpaid rent and utilities, for damages to the rental unit, for compensation for loss or damage under the Act or tenancy agreement as well as to recover the filing fee for this proceeding. The Landlord also applied to keep all or part of a security deposit.

The Landlord served the Tenants in person on January 10, 2009 with a copy of the Application and Notice of Hearing in this matter. I find that the Tenants were properly served pursuant to s. 89 of the Act and the hearing proceeded in their absence.

Issue(s) to be Decided

1. Are there arrears of rent and utilities and if so, how much?
2. Is the Landlord entitled to compensation for damages and if so, how much?
3. Is the Landlord entitled to keep all or part of the security deposit?

Background and Evidence

This fixed term tenancy started on May 28, 2008 and was to expire on June 30, 2009, however it ended on January 10, 2009 when the Tenants moved out. Rent was \$1,950.00 per month paid in 2 instalments. The Tenants paid a security deposit of \$975.00 at the beginning of the tenancy.

The Landlord claimed that the Tenants moved out without any notice to her, that they have arrears of rent of \$975.00 for December, 2008 and that they put a stop payment on their post-dated rent cheques thereafter. The Landlord said she advertised the rental unit for rent in 3 on-line publications at the same rate of rent at the beginning of January, 2009 when she discovered the Tenants were moving out. The Landlord said although she reduced the asking rent by \$300.00 on February 15, 2009, the rental unit has still not been re-rented.

The Landlord said the Tenants also have not paid the outstanding electricity account and as a result, it was transferred to the Landlord's tax account.

The Landlord said she tried to contact the Tenants a number of times in January, 2009 to do a move out condition inspection but the Tenants would not return her calls and refused to give her a forwarding address. The Landlord claimed she tried to clean the carpets with a steam cleaner but that stains, discolorations and pet urine could not be removed. As a result, the Landlord said the carpets will have to be professionally cleaned. The Landlord also claimed that it took 2 people 4 hours to clean the rental unit at the end of the tenancy. In particular, she said all of the walls had to be washed, as well as the 2 bathrooms, cupboards and 4 appliances cleaned.

Analysis

I find that there are rent arrears for December, 2008 in the amount of \$975.00. Section 45 of the Act says that a Tenant cannot end a fixed term tenancy earlier than the last day set out in the tenancy agreement as the end of the tenancy. If a Tenant ends the tenancy earlier, they may be liable to compensate a Landlord for any loss of rental income that results. A Landlord, however, has a duty under s. 7(2) of the Act to do whatever is reasonable to try to minimize her losses. I find that the Landlord made reasonable efforts to try to re-rent the rental unit and is entitled to recover loss of rental income for February, 2009 and ½ of March, 2009. If the Landlord suffers a further loss of rental income, she is at liberty to re-apply for those damages.

I also find that the Landlord is entitled to recover arrears of utilities to January 6, 2009 in the amount of \$156.46 that remain unpaid. The Landlord is also entitled to recover a further \$25.00 which she estimated would be charged to her for the electrical bill for the balance of January, 2009. Pursuant to s. 7 of the Regulations to the Act, I find that the Landlord is entitled to recover 2 NSF fees of \$5.00 each, and pursuant to s. 7(1) of the Act to a \$15.00 fee for certifying an NSF cheque.

I find that the Landlord gave the Tenants a reasonable opportunity to participate in a condition inspection of the rental unit at the end of the tenancy and to complete any remedial cleaning that would have been pointed out at that time. In the absence of any contradictory evidence from the Tenants, I find that the amounts claimed by the Landlord for carpet cleaning and general cleaning are reasonable and as a result, the Landlord is entitled to recover her expenses of \$150.00 and \$160.00 respectively.

I order the Landlord pursuant to s. 38, 62(3) and 72 of the Act to keep the Tenants' security deposit plus accrued interest in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

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|-------------------------------|------------|
| Rent arrears Dec. 2008: | \$975.00 |
| Loss rental income Jan. 2009: | \$1,950.00 |
| Loss rental income Feb. 2009: | \$1,950.00 |

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|-----------------------------------|-----------------|
| Loss rental income to Mar. 15/09: | \$975.00 |
| Unpaid Utilities to Jan. 6/09: | \$156.46 |
| Unpaid utilities to Jan. 31/09 | \$25.00 |
| Bank charges: | \$25.00 |
| Carpet Cleaning: | \$150.00 |
| General Cleaning: | \$160.00 |
| Filing fee: | <u>\$50.00</u> |
| Subtotal: | \$6,416.46 |
| Less: Security Deposit: | (\$975.00) |
| Accrued Interest: | <u>(\$8.75)</u> |
| BALANCE OWING: | \$5,432.71 |

Conclusion

A Monetary Order in the amount of **\$5,432.71** has been issued to the Landlord and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that court.