



Dispute Resolution Services

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

Decision

Dispute Codes: MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Tenants for the return of a security deposit as well as to recover the filing fee for this proceeding. The Landlord applied for a Monetary Order for loss of rental income as well as to recover the filing fee for this proceeding. The Landlord also applied to keep all or part of a security deposit.

Issue(s) to be Decided

1. Is the Landlord entitled to compensation and if so, how much?
2. Is the Landlord entitled to keep all or part of the Tenants' security deposit?

Background and Evidence

This tenancy started on January 15, 2008 and ended on December 31, 2008 (although the Tenants moved out on December 27, 2008). Rent was \$800.00 per month payable on the first day of each month. The Tenants paid a security deposit of \$400.00 at the beginning of the tenancy. The Tenants e-mailed the Landlord on December 4, 2008 to advise him they were ending the tenancy at the end of December, 2008. The Tenants said they gave the Landlord their forwarding address in writing (by e-mail) on December 30, 2008 and did not give their written authorization for the Landlord to keep the security deposit.

The Landlord claimed that he was not able to re-rent the rental unit until March 1, 2009 (at the same rate of rent). The Landlord said he placed an advertisement on Craig's list in mid-December, 2008, in the Penticton Western News on December 14, 17, 19, 2008, January 28, 30 and February 1, 2009 and in the Daily Courier at the end of January and beginning of February, 2009. The rental unit was advertised in those publications as being available January 1, 2009 at \$850.00 per month. Consequently, the Landlord sought loss of rental income for January, 2009 due to inadequate notice given by the Tenants. The Tenants argued that in waiting until mid-December, 2008 to advertise the rental unit, the Landlord did not take reasonable steps to mitigate his damages.

The Tenants also argued that the Landlord had not completed a condition inspection report and therefore was not permitted to make a claim against the security deposit.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from the later of the end of the tenancy or the date he receives the Tenants' forwarding address in writing to either return the deposit to the Tenants or to apply for dispute resolution to make a claim against it. If a Landlord fails to do either of these things and does not have the Tenants' written authorization to keep all or part of the security deposit, then pursuant to s. 38(6) of the Act the Landlord must return double the amount of the security deposit (plus accrued interest on the original amount) to the Tenants.

I find that the Landlord received the Tenants' forwarding address in writing on December 30, 2008 but that because it was a month-to-month tenancy, the tenancy did not end until December 31, 2008. I find that the Landlord did not return the security deposit to the Tenants and did not apply for dispute resolution by January 15, 2009 but rather applied well after the 15 day time limit set out in section 38(1) of the Act. Although the Parties made various proposals to settle this matter, I find that those negotiations did not relieve the Landlord from his responsibility to comply with the time limits under s. 38 of the Act. As a result, I find that the Landlord is liable to return double the amount of the security deposit to the Tenants.

Section 45 of the Act says that a Tenant must give a Landlord one clear month notice that they are ending a tenancy. In this case, the Tenants' notice was given on December 4, 2008 and would not have taken effect until January 30, 2009. However, s. 7(2) of the Act says that a Landlord must take reasonable steps to try to minimize his losses. I find that the Landlord started advertising the rental unit for rent on or about December 15, 2008. For some reason, however, it appears that the Landlord did not advertise the rental unit for rent in the local newspaper between December 20, 2008 and January 28, 2009. The Landlord also claimed that at some point the advertisement on Craig's list had to be renewed because it would have lapsed but he did not know when it was renewed. The Landlord also admitted that on January 14, 2009 he discovered that the sewer in the rental property had backed up raw sewage into the rental unit with the result that it took about a week to clean up and repair.

In the circumstances, I find that the Landlord took reasonable steps in December, 2008 to re-rent the unit but for some unexplained reason, did not actively advertise it during the month of January, 2009. As a result, I find that the Landlord is entitled to a loss of rental income but only for ½ of January, 2009. As each of the Parties has been partially successful, I make no award as to recovery of their respective filing fees. Pursuant to s. 38(4), 62(3) and 72 of the Act, I order the Landlord to keep \$400.00 of the Tenants' security deposit and to return the balance plus accrued interest of \$5.77 to them.

Conclusion

A Monetary Order in the amount of **\$405.77** has been issued to the Tenants and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be enforced in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.