



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision and Reasons

Dispute Codes:

MNR

MNSD

MNDC

FF

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence provided by the parties prior to the Hearing. The Landlords and the Tenant gave affirmed evidence at the Hearing and the Hearing proceeded on its merits.

Introduction

This is the Landlord’s application for a Monetary Order for unpaid rent; for a Monetary Order for damages; to retain the security deposit; and to recover the filing fee from the Tenants for the cost of the application.

Background and Evidence

The Landlord VW testified that she mailed the Tenants the Notice of Hearing documents, via registered mail, to the Tenants’ forwarding address on March 9, 2009.

This was a fixed term lease, with an expiry date of July 31, 2009. The tenancy started July 21, 2008, and ended on February 28, 2009. The monthly rent was \$2,200.00, due on the first day of the month. The Tenants paid a security deposit in the amount of \$1,100.00 to the Landlords on July 21, 2008. There was a move-in inspection and a move-out inspection done on the rental unit. Copies of the tenancy agreement and the Condition Inspection Report were provided into evidence.

The Landlords' testimony and evidence

- The Tenants provided the Landlords with written notice that they were ending the tenancy on January 27, 2009, effective February 28, 2009.
- On January 29, 2009, the Landlords posted ads on Craigs List, Rentboard.ca, RentalsBC.com and CanadaRent.net, with a reduced monthly rent of \$2,000.00. On February 6, 2009, the Landlords reduced the monthly rent again to \$1,900.00. On February 16, 2009, the Landlords reduced the monthly rent further to \$1,800.00. On February 18, 2009, the Landlords increased the circulation of the ads to include Kijiji.ca and HomeRent.ca.
- The Landlords received more than 50 enquiries and short-listed those applicants to 20. Of the 20 applications the Landlords sent out, only 6 people responded. 5 of those people were unacceptable, due to various reasons (i.e. poor credit ratings, bankruptcy, criminal record).
- The Landlords re-rented the house on March 6, 2009, effective April 1, 2009, for a monthly rent of \$1,700.00.
- The Landlords initially applied for loss of rent for the month of March, 2009, in the amount of \$2,000.00, but advised at the Hearing that they were only looking to recover loss of rent in the amount of \$1,700.00 for the month of March, together with recovery of the filing fee in the amount of \$50.00 and damages for costs to run 6 credit checks in the total amount of \$135.96 (\$22.66 for each credit check). The Landlord supplied copies of receipted invoices for 5 of the credit checks.

The Tenant's testimony and evidence

- The Tenant stated that he tried to open the lines of communication and settle this matter before the Landlords filed their Application for Dispute Resolution. The Tenant stated he believed Dispute Resolution was a last resort and he was never given an opportunity to avoid it. Therefore, he does not feel the Landlords are entitled to recover the cost of the filing fee from the Tenants.
- The Tenants provided the Landlord with a Mutual End of Tenancy Agreement on January 27, 2009.
- The Tenant questioned the viability of on-line no-fee advertising, and suggested that advertising in a local newspaper would have provided the Landlords with more applicants from which to choose. The Tenant stated that the Landlords did not provide photographs of the house with their ads, which would have made the house more desirable, and did not state what date the house was available for rent. The Landlords did not provide a contact number on the listing. The Tenant did not see any ads other than on Craigs List. The Tenants stated that the Landlords wasted time before posting the ad, and considered trying to sell the house, rather than re-rent it. The Tenant stated that the Landlord made crucial errors and should have rented the house earlier. Therefore, the Tenant does not believe the Landlords did enough to re-rent the house and were not motivated to re-rent the house.

Landlords' response to Tenant's testimony

- The ads were posted on January 29, 2009, only two days after the Tenants gave the Landlord their written notice to end the tenancy.
- The Landlords declined to sign the Mutual End of Tenancy Agreement, which was their right.
- The Landlords used 6 venues in an attempt to re-rent the house. The Landlords found the Tenants through Craigs List and feel that it is a successful and satisfactory way of advertising houses for rent. Some of the applicants advised the Landlords that the house was too small for their needs, or they wanted a

double garage rather than a single garage. The Landlords stated that they were competing with newer and larger homes and that it was a renter's market. The Landlords stated that they could not afford two mortgages and that they were therefore very motivated to re-rent the property. The Landlords stated that otherwise, they would have left the monthly rent at \$2,200.00, instead of ultimately reducing it to \$1,700.00.

Analysis

This was a term lease that was prematurely ended by the Tenants. The Landlords are applying for damages for loss of rent for the month of March, 2009, together with liquidated damages for the cost of securing credit checks for potential tenants, and recovering the filing fee.

I find that the Landlords were diligent in attempting to mitigate their loss because of the Tenant's vacating the rental unit early. I find that the Landlords advertised the house for rent in a timely fashion and with a number of different sites. Recognizing that this is a renter's market, the Landlords first advertised the property at \$200.00 per month less than the Tenants were paying, and then reduced the monthly rent in \$100.00 increments two more times in the space of a few weeks, before re-renting the house at a further reduced monthly rent. The Landlords have the right to do background checks on potential renters, in order to protect their property. The Landlords have amended their claim to apply for only \$1,700.00 for the month of March, 2009, instead of \$2,200.00 which they would have realized had the Tenants stayed for the term of the lease. Furthermore, the Landlords could have applied for the difference between what they are collecting for rent and what the Tenants would have paid, for the remainder of the term of the lease. Instead, the Landlords are only asking for damages in the amount of the reduced rent for the month of March, 2009. I find that the Landlords are entitled to \$1,700.00 in damages for lost rent for the month of March, 2009.

The Landlords have applied for liquidated damages in the amount of \$135.96. The tenancy agreement does not contain a clause allowing for these damages, and therefore, I dismiss this portion of the Landlords' claim without leave to re-apply.

The Landlords have been successful in its application and are entitled to recover the \$50.00 filing fee from the Tenants.

Pursuant to Section 72 of the Act, the Landlords may deduct the security deposit, together with interest accrued thereon, in partial satisfaction of their monetary claim.

The Landlords have established a monetary claim, as follows:

Loss of rent for March, 2009	\$1,700.00
Recovery of filing fee	\$50.00
Less security deposit and interest of \$7.39	<\$1,107.39>
TOTAL Monetary Order after set off	\$642.61
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Conclusion

Pursuant to Section 67 of the Act, I hereby grant the Landlords a Monetary Order in the amount of \$642.61 against the Tenants. This Order must be served on the Tenants and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

June 8, 2009
