



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

MNDC, MNSD, & FF

Introduction

This hearing dealt with an application by the landlord seeking compensation due to a breach of the fixed term tenancy by the tenants. The landlord also seeks to retain the tenants' security deposit plus interest in partial satisfaction of this claim.

Issues(s) to be Decided

Has the landlord established a monetary claim due to a breach of the tenancy agreement by the tenants? Should the landlord retain the tenants' security deposit plus interest in partial satisfaction of this claim?

Background and Evidence

Although the landlord provided a copy of the written tenancy agreement, only three pages out of six were provided as evidence. Therefore, the terms of the tenancy were verbally confirmed with the tenants during the hearing.

The parties agreed that the tenancy consisted of the following terms:

- A fixed term lease beginning September 1, 2008 and ending effective August 30, 2009, at which point the tenancy could end or it could revert to a month to month tenancy on the same terms;
- For the monthly rent of \$1,250.00 and a security deposit of \$625.00 paid on August 8, 2008 and a pet deposit of \$312.50 paid on September 1, 2008; and
- There were ten additional terms to the agreement which were signed by the parties on September 1, 2008. Some of the addition terms included the authorization for one pet, a cat, and a term indicating that one full months notice in writing was required prior to moving out.

The landlord stated that the tenants gave notice to end the tenancy in mid January 2009 as of March 31, 2009. The landlord submitted that told the tenants he would attempt to re-rent and began advertizing the rental unit in February 2009 for 8 weeks. Despite these attempts the landlord stated he was not able to rent the unit until April 20, 2009 and only at a reduced rent of \$1,100.00 per month.

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The landlord stated that the tenants provided written notice to vacate which they wanted him to sign. However, the landlord did not agree to sign the document but did accept their notice. The tenants provided an additional written document, produced by the *Residential Tenancy Branch*, for a mutual agreement to end the tenancy. However, again the landlord did not sign this document. The landlord stated that he was clear with the tenants that they were obligated to the fixed term lease, or any damages for ending the lease, unless he was successful in re-renting the unit without any loss.

The landlord seeks a monetary claim for the sum of \$632.81 based on the following:

Loss of pro-rated rental revenue for April 2009	\$847.00
Reimbursement of advertising costs	\$78.00
Recovery of filing fee paid for this application	\$50.00
Less the tenants' deposits plus interest	\$942.19
Total	\$632.81

The tenants dispute the landlord's claim. They submitted that it was their understanding that the landlord would release them from the fixed term lease. They stated that he indicated that it has previously never been an issue. The tenants submitted that they understood point #8 in the additional terms was specifically to reflect this. This term reads:

8. one full month notice in writing prior to moving out,

The tenants confirmed that they requested that the landlord would sign a mutual end to the tenancy to release them from their lease and confirmed that they understood that the lease was for one year, but specifically rely on the landlord's indication that previous tenant's breaking the lease was never a problem.

The tenants also dispute the lower rent the landlord has received for the rental unit. They indicated that at the time they rented the unit there was some competition and they offered to rent at \$1,250.00 per month to secure the tenancy. However, the original rent sought by the landlord was \$1,100.00. The tenants submitted that the landlord is benefiting unfairly from requesting the \$150.00 difference over four months.

Both parties indicated that there were some showings of the rental unit while the tenants were still in possession. The landlord indicated that he showed the place to a couple of individuals twice.

Analysis

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*.

I grant the landlord's application in part. Based on the oral statements made by both of the parties I accept they entered into a fix term lease for one year. I also accept that the tenants knew at the time they signed the contract that it was a lease, despite their statements now that it was a "loose" contract. Although I accept that the landlord had indicated to the tenants that in the past there was not a problem with finding new occupants to take over the lease that does not relieve the tenants of their obligation.

I also accept the landlord's evidence that he was not able to re-rent the unit until April 20, 2009 and that there was a difference in rent obtained of \$150.00 per month for the remaining period of the lease. I find that the tenants are responsible for this difference because they agreed at the time the contract was signed to pay the monthly rent of \$1,250.00. If the tenants had not breached the tenancy agreement then the landlord would not have suffered this loss.

I do not accept the landlord's claim for the cost of advertizing because the landlord failed to provide evidence to support this claim. Otherwise, this expense would also normally be an accepted loss due to the breach of the tenancy agreement.

I also grant the landlord's request to recover the \$50.00 filling fee paid for this application from the tenants. I find that the landlord has established a total monetary claim for the sum of **\$1,450.56**. This sum represents the loss that the landlord experienced as a result of the tenants' failure to fulfill the one year fixed term tenancy agreement and places the landlord back into the same position as if the contract had been fulfilled.

From this sum I Order that the landlord may retain the tenants' security and pet deposits plus interest of \$943.11 in partial satisfaction of this claim. I grant the landlord a monetary Order for the remaining balance owed of **\$513.06**.

The landlord's monetary claim is calculated as follows:

- Pro-rate rental loss of \$800.56 from April 1 to 19th, 2009 based on a per diem rental rate of \$42.13 ($\$1,250.00 \times 12 \text{ divided by } 356 = \$42.13 \times 19 \text{ days} = \800.56);
- Difference of rent from May to August 2009 of \$150.00 per month due to breach of contract for the sum of \$600.00; and
- Recovery of the \$50.00 filling fee paid for this application.



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Conclusion

The landlord's application is granted in part and a monetary Order for the sum of \$513.06 has been issued. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated: July 16, 2009.

Dispute Resolution Officer