

Decision

Dispute Codes: MND, MNSD, MNDC, FF

Introduction

This is the Landlords' application for a Monetary Order for loss of rent for the month of September, 2009 and damages to the rental unit; to apply the security deposit in partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenants.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed testimony and this matter proceeded on its merits.

Issue(s) to be Decided

- (1) Are the Landlords entitled to a Monetary Order, and if so, in what amount?
- (2) Are the Landlords entitled to recover the cost of the filing fee from the Tenants?

Background and Evidence

Landlords' testimony and evidence

The Landlords provided a copy of the tenancy agreement in evidence. The tenancy agreement is a one year term lease, commencing February 1, 2009. Monthly rent was \$2,250.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$1,125.00 on January 30, 2009.

On June 22, 2009, the Tenants told the Landlords that they would be ending the lease. The Tenants provided their written notice that they were ending their lease on June 25, 2009, and moved out of the rental unit on the same day.

The Landlords posted ads on Kijiji on June 28, attempting to find new tenants. The Landlords also attempted to sell the rental unit, and listed the rental suite for sale on July 15, 2009. The Landlords were attempting to mitigate their loss, but the rental unit did not sell. The Landlords advertised for a new tenant again in Kijiji on August 13, 2009 and September 1, 2009. The Landlords paid an extra fee so that their advertisement would be the first one shown on the web site. The rental unit was re-rented for October 1, 2009 for \$2,250.00 per month.

The Tenants paid the Landlords rent for the month of July, 2009 and loss of rent for the month of August, 2009. The Landlords are applying for loss of rent for the month of September, 2009.

The Landlords submitted that no one wanted to buy or rent the rental unit because it was dirty and messy. The Landlords testified that they live in Calgary, Alberta, and had an agent attend to cleaning and repairing the rental unit after the Tenants moved out.

The Landlords are applying for a monetary award to include:

Description	Amount claimed
Cost of advertising and administration fees	\$1,114.00
Loss of rent for the month of September	\$2,250.00
Cost to clean and repair rental unit	\$463.45
Total claim	\$3,827.45

The Landlords supplied copies of invoices in evidence in support of their monetary claim.

Landlords' Witness's testimony

The Witness is the Landlords' agent. The Witness performed a move-in inspection at the beginning of the tenancy. The Witness took photographs of the rental unit at the

beginning of the tenancy. The Witness also did a move-out inspection at the end of the tenancy.

The carpets had to be shampooed because they were dirty. A new shower cartridge was installed in the master bathroom. The shower wall had to be recaulked and there were necessary repairs to the electrical outlets and lights. The stove was dirty and the kitchen was greasy.

Tenant YL's testimony

The carpets were dirty when the Tenants moved into the rental unit. The Tenants had to shampoo the carpets when they moved in and paid \$70.00 for the carpet cleaner. The fire place and the faucets in the ensuite bathroom were not working properly. The appliances were over ten years old and the Tenants cleaned the oven prior to moving out.

The Tenant does not agree with any of the items the Landlords are requesting reimbursement for, with the exception of the cost of advertising the rental unit in the amount of \$59.97.

Analysis

This Hearing was challenged by contradictory testimony of the parties with respect to the cleanliness and state of repair of the rental unit when the Tenants moved in and when the Tenants moved out. The Landlords did not provide documentary evidence of Condition Inspection Reports at move-in or move-out. The Landlords' Witness testified that he took photographs of the rental unit, but none were entered in evidence. The Tenants dispute the Landlords' claim that they damaged the rental unit, and left it unclean. This is the Landlords' application, and therefore the onus is on the Landlords to prove their monetary claim for damages. I find that the Landlords have not provided sufficient documentary evidence to support their claim for \$463.45 in cleaning and

damages, and therefore, I dismiss this portion of the Landlords' claim without leave to reapply.

There is no clause in the tenancy agreement for liquidated damages. The Landlords provided a number of invoices and statements of account with respect to advertising costs and their agent's fees. The Landlord has claimed a total of \$1,114.00 for this portion of their application, but that amount does not reconcile with the invoices provided. I find that the Landlords have not provided sufficient documentary evidence to support this portion of their claim. However, in the Hearing the Tenants agreed to pay advertising costs in the amount of \$59.97, and I award the Landlords this amount for administrative costs.

The Tenants signed a one year lease for the rental unit and ended the tenancy early, on June 25, 2009, after providing written notice on the same day they moved out. The Tenants paid the Landlords rent for the month of July, 2009, and for loss of rent for the month of August, 2009.

Section 7 of the *Residential Tenancy Act* (the Act) states:

Liability for not complying with this Act or a tenancy agreement

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The Landlords testified that they attempted to mitigate or minimize their losses, in accordance with the provisions of Section 7(2) of the Act, by advertising the rental unit in one on-line service and also by listing the rental unit for sale. The Landlords did not advertise the rental unit in any other way (i.e. in the local newspaper, or in any other on-

line service). It may be that potential tenants were discouraged by the fact that the rental unit was also for sale. The Landlords did not attempt to re-rent at a reduced rate and then go after the Tenants for the difference for the term of the Tenants' lease. In fact, the evidence provided indicates that the Landlord attempted to re-rent the suite for \$100.00 more than the Tenants were paying. For these reasons, I do not find that the Landlords did enough to mitigate their losses and dismiss the Landlord's application for loss of rent for the month of September, 2009, without leave to reapply.

The Landlords have been partially successful in their application, and therefore, I order that the parties share the cost of the filing fee equally.

Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlords may retain a portion of the security deposit towards satisfaction of their monetary claim. No interest has accrued on the security deposit. I order that the Landlords return the balance of the security deposit to the Tenants forthwith.

I provide the Tenants with a Monetary Order, calculated as follows:

Security deposit	\$1,125.00
Less cost of advertising	-\$59.97
Less half of filing fee	<u>-\$25.00</u>
Balance of security deposit due to the Tenants	\$1,040.03

Conclusion

Much of the Landlords' claim has been dismissed. The Tenants are entitled to the return of the balance of their security deposit after the Landlords have deducted their monetary award. Therefore, I hereby grant the Tenants a Monetary Order in the amount of \$1,040.03 against the Landlords. This Order must be served on the Landlords and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

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.

January 27, 2010

Date of Decision