

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing was convened in response to joint applications filed by the landlords and the tenants. The landlords seek:

1. A monetary order for damage and/or compensation for loss;
2. A monetary order for unpaid rent;
3. An order to be allowed to retain the security deposit; and
4. Recovery of the filing fee paid for this application.

The tenants' seek:

1. A monetary order to recover the security deposit; and
2. Recovery of the filing fee paid for this application.

Issues(s) to be Decided

Whether the applicants are entitled to the Orders sought.

Background and Evidence

The parties entered into a fixed term tenancy agreement commencing January 1, 2009 and ending on December 31, 2009 at which time the tenancy was to end and the tenants must move out of the rental unit. Rent was fixed at \$2,200.00 per month and the tenants were responsible for paying their own utilities. The tenants had already paid a security deposit of \$1,100.00 on December 3, 2008.

The landlord testified that in September 2009 the tenants advised him that they would be vacating the rental unit on October 31, 2009. The landlords placed an advertisement in the local newspapers on or about September 15, 2009 hoping to secure a new tenant

for the months of November and December 2009. The landlord testified that they planned to move into the rental unit themselves in January 2010. The landlord testified that he had many prospective tenants view the home but he had to advise prospective tenants that the tenancy could only last two months. This, the landlord says, made it very difficult to re-rent the premises. Eventually the landlord lowered the rent to \$1,900.00 to attract tenants. The landlord says they were lucky enough to find a tenant who moved in on November 15, 2009 however that tenant was only able to remain until December 15, 2009. The landlord is therefore claiming the following:

Rental differential – November and December rent \$4,400.00 less \$1,900.00 paid by new tenant	\$2,500.00
Cleaning costs	371.25
Carpet shampooing	210.00
Repair front door	12.00
Repair stair rail	35.00
Rental Advertisement 3 issues Peace Arch News	186.60
Utilities for November and December Heat \$40.00 per month; Light \$35.00 per month	150.00
Total	\$3,464.85

With respect to the rental arrears the tenants say the landlord knew that they were moving and accepted that they were doing so. The tenants say this verbal agreement constitutes an agreement to end the tenancy prior to the end of its fixed term. The tenants say that there is evidence of the verbal agreement in the correspondence between the parties.

With respect to the other items claimed, the tenants agree that they should repay the landlords for the cost of the repairs to the front door and stair rail totally \$47.00 but they deny they should be held responsible for the other items. The tenants say that the cleaned was stained when they moved in. When they vacated, the tenants say they cleaned the rental unit thoroughly and shampooed the carpets themselves by renting a carpet shampooer from Safeway. The tenants say there was no requirement to have the carpets professionally cleaned. With respect to the utilities the tenants say they have no idea why they should be charged for these.

Analysis & Findings

Tenancy Agreements must comply with the *Residential Tenancy Act* and the Regulations. With respect to Tenancy Agreements the Act states:

Tenancy agreements include the standard terms

12 The standard terms are terms of every tenancy agreement

- (a) whether the tenancy agreement was entered into on or before, or after, January 1, 2004, and
- (b) whether or not the tenancy agreement is in writing.

Requirements for tenancy agreements

13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

- (a) the standard terms;
- (b) the correct legal names of the landlord and tenant;
- (c) the address of the rental unit;
- (d) the date the tenancy agreement is entered into;
- (e) the address for service and telephone number of the landlord or the landlord's agent;
- (f) the agreed terms in respect of the following:
 - (i) the date on which the tenancy starts;
 - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
 - (iii) if the tenancy is a fixed term tenancy,
 - (A) the date the tenancy ends, and
 - (B) whether the tenancy may continue as a periodic tenancy or for another fixed term after

that date or whether the tenant must vacate the rental unit on that date;

(iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;

(v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;

(vi) which services and facilities are included in the rent;

(vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

(3) Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

Changes to tenancy agreement

14 (1) A tenancy agreement may not be amended to change or remove a standard term.

(2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

(3) The requirement for agreement under subsection (2) does not apply to any of the following:

(a) a rent increase in accordance with Part 3 of this Act;

(b) a withdrawal of, or a restriction on, a service or facility in accordance with section 27 *[terminating or restricting services or facilities]*;

(c) a term in respect of which a landlord or tenant has obtained an order of the director that the agreement of the other is not required.

The Regulations state:

Part 2 — Requirements for Tenancy Agreements

Tenancy agreement must comply with Act

11 A landlord must ensure that any tenancy agreement entered into or renewed by the landlord on or after the date the Act comes into force complies with this Part.

Disclosure and form of agreement

12 (1) A landlord must ensure that a tenancy agreement is

- (a) in writing,
- (b) signed and dated by both the landlord and the tenant,
- (c) in type no smaller than 8 point, and
- (d) written so as to be easily read and understood by a reasonable person.

(2) A landlord must ensure that the terms of a tenancy agreement required under section 13 [*requirements for a tenancy agreement*] of the Act and section 13 [*standard terms*] of this regulation are set out in the tenancy agreement in a manner that makes them clearly distinguishable from terms that are not required under those sections.

The landlord has submitted a written Tenancy Agreement using the form provided on the Residential Tenancy Branch website. The tenants say that agreement was amended to end the tenancy prior to the end of the fixed term. The tenants say that while the amendment was not in writing, conversations and correspondence between themselves and the landlord reveal that the landlord was in agreement with ending the tenancy early. The tenants say that further evidence of the landlord's agreement is demonstrated by the fact that the landlord started looking for a new tenant and put advertisements in the paper.

But what is a landlord to do when a tenant advises a landlord that he intends to vacate earlier than the fixed term? In the case of a landlord agreeing with the charge, the

landlord would have a responsibility to ensure that this new arrangement was set out, like the original tenancy agreement, in writing. The landlord would therefore prepare an amended agreement to reflect the new end date and the landlord and tenant would both sign agreeing to the amendment. However, if the landlord does not agree to make any changes to the original tenancy agreement all a landlord can do is resign himself to the situation and start looking for a new tenant in an attempt to mitigate losses. I find the landlord's letter of September 15, 2009 in which he acknowledges the tenants' notice and advises "We have advertised the house for rent and hope that we can find a tenant for November and December 2009" to be clear evidence of the landlord's resignation to the situation. Further, I find that the landlords clearly entered into this tenancy agreement ending it specifically on December 31, 2009 without an opportunity to renew because they knew they would be occupying the rental unit themselves afterwards. By vacating the rental unit just 2 months prior to the end of the fixed term, not only did the tenants fail to honour their agreement with the landlords, but they left the landlords in the difficult predicament of having to find new tenants for a short 2 month tenancy. Clearly diligence and luck prevailed and the landlord was able to find a tenant willing to stay for at least part of the last 2 months. Having found that tenant I find that the landlords have sufficiently mitigated their damages. I find therefore that the landlords are entitled to the loss of rent differential of \$2,500.00. Further, I accept their evidence that it was necessary for them to pay for utility charges that would have been borne by these tenants had they not vacated the rental unit early and I will allow the landlords to recover the \$150.00 they have claimed for utilities. I will also allow the landlords to recover the \$186.60 they paid to advertise the rental unit. I will allow this because the landlords would not have had this expense had the tenants honoured their contract with them as they did not intend to re-rent the premises at the end of this fixed term.

With respect to the cleaning charges, which the tenants' dispute, the landlord bears the burden of proving these claims and I find he has not. As the tenants have agreed to the repair charges I will award the landlord a further \$47.00 as claimed.

As the landlord's have been mostly successful in this claim I will also award them recovery of the filing fee.

The tenant's claim for recovery of their security deposit is dismissed as the deposit will be applied in partial satisfaction of the landlords' monetary award.

Calculation of the monetary award in favour of the landlords:

Rental differential – November and December rent \$4,400.00 less \$1,900.00 paid by new tenant	\$2,500.00
Repair front door	12.00
Repair stair rail	35.00
Rental Advertisement 3 issues Peace Arch News	186.60
Utilities for November and December Heat \$40.00 per month; Light \$35.00 per month	150.00
Filing Fee	50.00
Less Security Deposit paid December 3, 2008 and interest	-1,101.31
Balance owing by the tenants to the landlords	\$1,832.29

Conclusion

The landlord is provided with a formal copy of an order for the total monetary award as set out above. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial Court of British Columbia.