



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNR, MND, MNDC, FF

Introduction

This hearing dealt with the landlord's application for a monetary order as compensation for unpaid rent / compensation for damage to the unit / compensation for damage or loss under the Act, regulation or tenancy agreement / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the landlord is entitled to any or all of the above under the Act, regulation or tenancy agreement

Background and Evidence

There is no written tenancy agreement in place for this month-to-month tenancy which began on or about November 17, 2008. By way of oral agreement, monthly rent was \$1,200.00; utilities were not included in the rent. There was no security deposit collected and neither was a move-in condition inspection report completed. In the absence of any written notice to the landlord, the tenant vacated the unit on January 11, 2009. No move-out condition inspection report was completed. The parties disagree in relation to the condition of the unit at the start of tenancy, compared with the condition of the unit at the end of tenancy. In total, the tenant's payment of rent for the entire term of tenancy was limited to \$300.00. The landlord testified that the unit was never again rented and that he did not advertise for renters after the tenant moved out.

Efforts made by the parties during the hearing to resolve the dispute between them were not successful.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/ The attention of the parties is drawn in particular to the following sections of the Act:

Section 23: Condition inspection: start of tenancy or new pet

Section 24: Consequences for tenant and landlord if report requirements not met

Section 35: Condition inspection: end of tenancy

Section 36: Consequences for tenant and landlord if report requirements not met

Section 45: Tenant's notice

Section 52: Form and content of notice to end tenancy

Section 60: Latest time application for dispute resolution can be made

Further, the Act defines a “**tenancy agreement**” as follows:

means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Based on the documentary evidence which includes but is not limited to photographs, and the testimony of the parties, the particular aspects of the landlord's claim and my findings around each are set out below:

\$500.00*: *rent for the period from November 17 to 30, 2008.* I find that the parties entered orally into a month-to-month tenancy agreement. The landlord confirmed that this is the limited amount he seeks in rent for this particular 14 day period. I find that the landlord has established entitlement to the full amount claimed.

\$1,200.00*: *rent for December 2008.* Further to the above, I find that the landlord has established entitlement to the full amount claimed.

\$1,200.00*: *rent for January 2009.* Even while there is no dispute that the tenant vacated the unit on January 11, 2009, neither is there any dispute that the tenant did not provide the landlord with proper written notice to end the tenancy. In relation to notice, section 45 of the Act provides in part as follows:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

Accordingly, I find that the landlord has established entitlement to the full amount claimed.

\$1,200.00: *loss of rental income for February 2009.* Despite the absence of proper written notice by the tenant to end the tenancy, as earlier stated, the landlord did not rent the unit following the tenant's departure on January 11, 2009, and neither did he advertise or by any other means attempt to re-rent the unit. Residential Tenancy Policy Guideline # 5 addresses the "Duty to Minimize Loss," and provides in part as follows:

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The dispute resolution officer may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation.

If the dispute resolution officer finds that the party claiming damages has not minimized the loss, the dispute resolution officer may award a reduced claim that is adjusted for the amount that might have been saved.

I find that as the landlord undertook no efforts to mitigate the loss of rental income after the tenant's departure, this aspect of the application is hereby dismissed.

\$875.60: *hydro.* The billing period shown on the invoice is from October 31 to December 31, 2008. The total number of days encompassed is 62. The daily average is therefore \$14.12.

Even while I have found that the tenant is responsible for payment of rent to January 31, 2009, as she vacated the unit on January 11, 2009 and the cost of utilities is largely based on consumption, I find that the tenant is responsible for the cost of hydro limited to the period from November 17, 2008 when tenancy began, to January 11, 2009 when she vacated the unit. The total number of days encompassed is 56. I find that the cost to the tenant is therefore **\$790.72*** (56 x \$14.12).

\$115.10: *water.* The billing period shown on the invoice is from November 15, 2008 to March 18, 2009. The total number of days encompassed is 125. The total amount of the bill is \$115.10. The daily average billing is therefore \$0.92.

As previously stated, even while I have found that the tenant is responsible for payment of rent to January 31, 2009, as she vacated the unit on January 11, 2009 and the cost of utilities is largely based on consumption, I find that the tenant is responsible for the cost of water limited to the period from November 17, 2008 when tenancy began, to January 11, 2009 when she vacated the unit. The total number of days encompassed is 56. I find that the cost to the tenant is therefore **\$51.52*** (56 x \$0.92).

\$400.00: *repairs to damage.* In the absence of either a move-in or move-out condition inspection report, or receipts, I find that this aspect of the landlord's claim is limited to

\$30.00*. This finding is based on the tenant's testimony that either she or her guest was responsible for limited damage to drywall which the landlord was left to repair.

\$50.00*: *filing fee*. As the landlord has achieved some success with his application, I find that he has established entitlement to recovery of the full amount claimed.

Following from the above, I find the landlord has established entitlement to **\$3,822.24**. Offset against this is the payment received from the tenant in the amount of **\$300.00**. I grant the landlord a monetary order under section 67 of the Act for the balance owed of **\$3,522.24** (\$3,822.24 - \$300.00)

Finally, as to the latest time an application for dispute resolution can be made, section 60 of the Act provides in part, as follows:

60(1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

While the tenant vacated the unit on January 11, 2009, she failed to provide proper notice to end the tenancy. In order to comply with the Act, notice to end effective January 31, 2009, would be required to be given not later than December 31, 2008. Or, notice given not later than January 31, 2009, would be effective February 29, 2009.

The landlord's application was filed on January 20, 2011. Accordingly, whether one takes the position that the tenancy legally ended on January 31 or February 29, 2009, I find that the application was filed within the 2 year period permitted.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$3,522.24**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court 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*.

DATE: April 14, 2011

Residential Tenancy Branch