



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the landlords 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 / retention of the security deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

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

Background and Evidence

There is no formal written tenancy agreement in evidence for this tenancy which began on July 18, 2009, at approximately which time a security deposit of \$525.00 was collected. There is no evidence of a move-in condition inspection report.

At the outset of tenancy, monthly rent was \$1,050.00 and it was due and payable on the first day of each month. Subsequently, pursuant to mutual agreement, monthly rent was reduced to \$900.00 effective from September 1, 2010. By way of e-mail exchanges between the parties, it was agreed that rent would remain at this level for a fixed term ending either March 31 or April 30, 2011, it is not entirely clear. Documentary evidence includes copies of rent cheques post dated for December 3, 2010, as well as for the 1st day of each of the 4 months of January, February, March and April 2011.

By way of e-mail dated on or about November 10, 2010, the tenants gave notice to end the tenancy effective November 30, 2010. Thereafter, the tenants put a stop payment on the December 2010 rent cheque, and the landlords returned the remaining post-dated rent cheques to the tenants. There is no evidence of a move-out condition inspection report.

Following the departure of the tenants, the landlords testified that they placed an advertisement for new renters in a local newspaper in early December 2010, and also placed an advertisement on kijiji. To date, new renters have not been found.

The dispute centres around what costs should be borne by the tenants following the end of tenancy, and the particulars of the landlords' claim are set out below.

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 specific aspects of the landlords' claim and my findings around each are as follows:

\$3,600.00: loss of rental income (4 x \$900.00: December '10 – March '11). The Act defines "**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, e-mail exchanges, post-dated rent cheques, as well as the landlords' written application, and testimony, I find that the parties amended a month-to-month tenancy to a fixed term ending March 31, 2011.

Section 45 of the Act addresses **Tenant's notice**, and provides in part:

45(2) A tenant may end a fixed term 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,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) 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.

Based on the documentary evidence and testimony, and in view of the above statutory provisions, I find that the tenants did not provide proper notice to end the tenancy. As I have found that the parties agreed to a fixed term tenancy ending March 31, 2011, there is a potential claim by the landlords for loss of rental income for December 2010, as well as January, February and March 2011.

Following from the above, Residential Tenancy Policy Guideline # 5 speaks to "Duty to Minimize Loss" and provides in part as follows:

Efforts to minimize the loss must be “reasonable” in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

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.

As earlier noted, efforts undertaken by the landlords to find new renters appear to be limited to one newspaper advertisement in December 2010, as well as an advertisement placed on kijiji during that same month. In consideration of these limited efforts, and in view also of the difficulty generally inherent in finding new renters during the holiday season, I find that the landlords have established entitlement to loss of rental income limited to December 2010 and January 2011. I find there is insufficient evidence of the landlords having undertaken reasonable efforts to mitigate the loss of rental income for February and March 2011. In short, I find that the landlords have established entitlement to **\$1,800.00*** (2 x \$900.00).

\$600.00: *hydro & gas utilities (4x \$150.00 – December 2010 to March 2011).* Based on the documentary evidence and testimony, I find on a balance of probabilities that the landlords’ estimates of these monthly utility costs are reasonable. Further, as I have found that the landlords have established entitlement to loss of rental income for December 2010 and January 2011, I find that the landlords have also established entitlement to the estimated cost of utilities for these same 2 months of **\$300.00*** (2 x \$150.00).

\$200.00: *estimated cost of repair / replacement of wood cabinet door.* In their documentary evidence and during the hearing itself, the tenants acknowledge responsibility for drilling the hole(s). In the absence of any actual cost having presently been incurred, I find that the landlords have established nominal entitlement limited to **\$50.00** which is 25% of the estimated cost of repair / replacement.

\$200.00: *estimated cost of labour and materials for miscellaneous repairs around the unit.* In the absence of move-in and move-out condition inspection reports, there is

insufficient evidence of the comparative condition of the unit at the start and end of tenancy. Accordingly, I hereby dismiss this aspect of the landlords' claim.

\$200.00: *estimated cost of rubbish removal.* The parties present differing views on the amount of rubbish requiring removal from the within and around the unit, and disagree as to what portion of it belonged to the tenants. Based on the documentary evidence and testimony, I find on a balance of probabilities that the landlords have established entitlement limited to **\$100.00.***

\$150.00: *carpet cleaning & other general cleaning.* While the tenant testified that cleaning was undertaken in the unit, she acknowledged that the carpet was not professionally cleaned at the end of tenancy. In this regard, Residential Tenancy Policy Guideline # 1 speaks to "Landlord & Tenant – Responsibility for Residential Premises," and provides in part as follows:

CARPETS

3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

In the absence of either move-in or move-out condition inspection reports, and based on the available documentary evidence and testimony, I find that the landlords have established entitlement limited to **\$75.00***.

\$473.55*: "change toilet / fix floor under toilet:" This work was completed by a plumber attending the unit who informed the tenants of his view that there was extensive work that should be undertaken. In their written submission the landlords stated in part, as follows:

...the toilet was working, but there was occasional back flush which required a second flush. There were two other working toilets in the house in any event. I could have done this myself at a convenient time.

While there is no evidence that this was an emergency repair, or evidence that the tenants sought the landlords' permission to have the work completed, the landlords are the long term beneficiaries of the completed job. In sum, based on the documentary evidence and testimony, I find that the landlords have established entitlement limited to **\$50.00***.

\$50.00*: *tree work and disposal of related debris*. In documentary evidence the tenants acknowledge that they "fell dead trees in back yard" and can "clean up limbs come spring if they wish." In the circumstances, the landlords expressed no desire for the tenants to return to the property. Based on the documentary evidence and testimony I find that the landlords have established entitlement to the full amount claimed.

\$100.00: *filing fee*. As the landlords have achieved partial success with their application, I find that they have established entitlement limited to **\$50.00***.

Total: \$2,475.00

Following from the above, as for the monetary order, I find that the landlords have established a claim of **\$2,475.00**. I order that the landlords retain the security deposit of **\$525.00** and I grant the landlords a monetary order under section 67 of the Act for the balance owed of **\$1,950.00** (\$2,475.00 - \$525.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords in the amount of **\$1,950.00**. Should it be necessary, this order may be served on the tenants, 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 26, 2011

Residential Tenancy Branch