



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a loss of rental income, to recover utility, advertising and cleaning expenses as well as the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing packages") by registered mail to a forwarding address provided by the Tenants in writing at the end of the tenancy. The Landlord provided copies of e-mail correspondence from the Tenants in which they instructed the Landlord to use the rental unit address as their forwarding address because they had redirected their mail with Canada Post. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing packages as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

Issue(s) to be Decided

1. Is the Landlord entitled to compensation for a loss of rental income and if so, how much?
2. Is the Landlord entitled to compensation for utility, advertising and cleaning expenses and if so, how much?
3. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on August 1, 2009 as a one year fixed term tenancy. On July 31, 2010, the Parties entered into another one year fixed term tenancy however this tenancy agreement provided that either party could end the tenancy early upon giving the other party 3 months written notice. The tenancy ended on November 30, 2010 when the Tenants moved out. Rent was \$2,000.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$1,000.00 at the beginning of the tenancy.

The Landlord said the Tenants gave him written notice on October 8, 2010 (by e-mail) that they were ending the tenancy effective December 1, 2010. The Landlord said he advised the Tenants that they had not given him the agreed upon 3 months notice and warned them that they would be liable to compensate him for a loss of rental income if the property could not be re-rented during that notice period. The Landlord said he advertised the rental unit in a local newspaper and in an on-line publication starting in mid-October, 2010 however it could not be re-rented until February 2011. Consequently, the Landlord sought compensation for a loss of rental income for 2 months, compensation for utility expenses during that time and out of pocket expenses for advertising the rental unit.

The Landlord also claimed that the Tenants did not leave the rental unit and property reasonably clean at the end of the tenancy. The Landlord said he had difficulty trying to arrange a time to do a move out inspection with the Tenants because they could not agree on a date or time. The Landlord said he advised the Tenants as early as November 30, 2010 that further cleaning was necessary and gave them an opportunity to do further cleaning. The Landlord said he eventually hired an agent to do a move out inspection (and report) on December 4, 2010 and to do cleaning. The Landlord also said he incurred expenses to remove leaves and other debris from the yard. In support of his claim for cleaning and yard maintenance expenses, the Landlord provided copies of photographs that he said he took of the rental unit and property at the end of the tenancy.

Analysis

Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that he incurs as a result. Section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income.

In this case, the Parties agreed that the Tenants could end the fixed term tenancy earlier than the last day of the tenancy provided that at least 3 full calendar months notice in writing was given. Consequently, I find that the earliest that the Tenants' notice dated October 8, 2010 could have taken effect would have been January 31, 2011. Based on the evidence of the Landlord, I find that he took reasonable steps to try to re-rent the rental unit by advertising it in a number of publications shortly after he received the Tenants' notice. As a result, I find that the Landlord is entitled to be compensated for a loss of rental income for December 2010 and January 2011 in the amount of **\$4,000.00**. I also find that the Landlord is entitled to recover hydro and gas expenses for that period of **\$54.48** and **\$167.83** respectively.

The Landlord also sought to recover his expenses for advertising the rental unit in a local newspaper in the amount of **\$351.14**. Section 7(1) of the Act says that if a Landlord or Tenant does not comply with the Act or tenancy agreement, the non-complying party must compensate the other for any damage or loss that results. In this case, the Landlord said he would not have had to incur expenses of advertising in a newspaper had the Tenants given him 3 months notice but instead would have relied on signage posted on the rental property and free online advertising (as he was accustomed to do). However, due to the short notice, the Landlord said he relied on advertising in a local newspaper in an attempt to rent the rental unit as soon as possible. In the circumstances, I find that the Landlord is entitled to recover his newspaper advertising expenses.

Section 37 of the Act says that at the end of a tenancy, a Tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. The Landlord claimed that the Tenants did not leave the rental unit reasonably clean and did not maintain the yard which also had to be cleaned up. In support of his position, the Landlord provided a copy of a move out condition inspection report completed by a 3rd party and photographs he said he took at the end of the tenancy. The Landlord said he was unable to complete a move out condition inspection report with the Tenants because they could not agree on a date or time.

Section 35 of the Act requires a Landlord to arrange a move out condition inspection with the Tenants and in particular, he must offer them 2 opportunities. Section 17 of the Regulations to the Act says that the second opportunity must be made by giving a notice in the approved form (or a document called a Final Opportunity to Schedule a Condition Inspection) to the Tenant. Only after a Landlord has complied with this step and the Tenants have failed to attend the rental unit on that date and time is a Landlord authorized to complete a move out inspection without the Tenants. The Landlord admitted that he did not give the Tenants a notice in the prescribed form and as a result, I find that he did not comply with s. 35 of the Act. For this reason, I find that the Landlord is not entitled to recover expenses of \$50.00 to have a 3rd party inspect the rental unit on December 4, 2010 and complete the move out condition inspection report.

However, based on the photographic evidence provided by the Landlord, I find that the rental unit was not reasonably clean at the end of the tenancy and required remedial cleaning to address dirty floors, walls, baseboards, window sills and the stove. Consequently, I find that the Landlord is entitled to recover cleaning expenses of **\$130.00**. I also find based on the photographic evidence of the Landlord that some yard maintenance was necessary to remove a large amount of leaves and other organic debris. The Landlord said it took 4 people 8 hours to do the yard work. RTB Policy Guideline #1 at p. 7 says that a tenant who lives in a single family dwelling (and who has exclusive use of the yard) is responsible for routine yard maintenance. Consequently, I find that the Landlord is entitled to recover his yard maintenance expenses of **\$210.00**.

As the Landlord has been successful in this matter, I find that he is entitled pursuant to s. 72(1) of the Act to recover from the Tenants the \$100.00 filing fee he paid for this proceeding. I Order the Landlord pursuant to s. 38(4) of the Act to keep the Tenants' security deposit in partial payment of the loss of rental income award. The Landlord will receive a Monetary Order for the balance owing as follows:

Loss of Rental income:	\$4,000.00
Utilities:	\$222.31
Advertising:	\$351.14
Cleaning expenses:	\$130.00
Yard maintenance:	\$210.00
Filing fee:	<u>\$100.00</u>
Subtotal:	\$5,013.45
Less: Security deposit:	(\$1,000.00)
Accrued interest:	<u>(\$0.00)</u>
Balance Owing:	\$4,013.45

Conclusion

A Monetary Order in the amount of **\$4,013.45** has been issued to the Landlord and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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*.

Dated: April 20, 2011.

Residential Tenancy Branch