



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR; MNDC, MNSD; FF

Introduction

This is the Landlord's application for a Monetary Order for unpaid rent and loss of revenue, to retain the security and pet damage deposits in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

It was established that the Tenant was served with the Notice of Hearing documents in accordance with the provisions of Section 89(1)(c) of the Act. It was also determined that each party were served with the other party's documentary evidence.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent for the month of December, 2010, and loss of income for the month of January, 2011?

Background and Evidence

The parties agreed on the following facts:

This tenancy began on August 1, 2008. Monthly rent was \$925.00, due on the first day of each month. On July 12, 2008, the Tenant paid a security deposit in the amount of \$462.50 and a pet damage deposit in the amount of \$250.00.

On December 14, 2010, the Tenant gave the Landlord written notice that she was ending the tenancy effective December 31, 2010. The Tenant did not pay rent for the month of December, 2010. The Tenant moved out of the rental unit at the end of December, 2010.

The Landlord gave the following oral testimony and documentary evidence:

The rental unit had leaks from an unknown cause. In the spring of 2008, the Landlord hired professionals, who installed new drain tile and foundation sealer. This appeared to solve the problem until the winter of 2009, when the Tenant advised the Landlord that there was water seeping in at the same spot as the previous leak. The Landlord and the same professional re-dug around the area and installed more drain tile 3 to 4 feet lower. In November of 2010, the Tenant told the Landlord the leak had come back. The Landlord tried a number of different remedies in an attempt to stop the leak, but they did not work. Finally, on December 12, 2010, the Landlord discovered what was causing the leaks. A piece of the footing was missing. On December 13, 2010, the Landlord began to take the steps required to finally fix the problem (hand excavate down, pour in concrete, apply foundation sealer and spray for mildew and bacteria).

On December 9, 2010, the Landlord offered the Tenant alternate accommodation until her suite was remediated, a two bedroom furnished suite at no charge. The Tenant declined the Landlord's offer and said she would be staying with her boyfriend. The Landlord told the Tenant that the rental unit would be ready on Saturday, December 18, 2010, but the Tenant told the Landlord she had already moved out and would not be moving back.

The Landlord advertised the rental unit as soon as he received the Tenant's notice on December 14, 2010, but it was Christmas time and no one applied to rent the unit until January 10, 2011. The unit was re-rented in February, 2011.

The Landlord did not receive the Tenant's forwarding address until he e-mailed her on March 10, 2011, requesting her address. The Landlord filed his Application for Dispute Resolution on March 10, 2011.

The Tenant gave the following oral testimony and documentary evidence:

The Tenant testified that there was a long standing issue with water leaking into the suite. She stated that she had notified the Landlord about the leakage in November, 2010, but that he had not given her a commitment as to when he would repair the leak.

The Tenant stated that she provided the Landlord with a letter on December 11, 2010, in which she outlined the problem in writing and complained about mould in the rental unit. The Tenant stated that she could no longer live in the rental unit because of the mould and therefore gave her notice on December 14, 2010.

Analysis

Section 26 (1) of the Act states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenant had no right under the Act to deduct all or a portion of the rent for December, 2010. Therefore, I find that the Landlord is entitled to a monetary award in the amount of \$925.00 for unpaid rent for December, 2010.

Section 45 of the Act defines how tenants can end tenancies in British Columbia:

Tenant's notice

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.

(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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

In this case, the Tenant did not provide the Landlord with sufficient notice to end the tenancy under Section 45(1) of the Act. In order to end the tenancy December 31, 2010, the Tenant was required to provide the Landlord with written notice by November 30, 2010.

The Tenant alleges that the Landlord did not attend to repairing a leak in the foundation of the rental unit in a timely fashion and that she provided the Landlord with written notice of the leak and resulting mould issues on December 11, 2010. Section 45 (3) of the Act requires a tenant to provide a reasonable period of time for a landlord to make repairs after receiving written notice. In the letter, the Tenant required the Landlord to fix the foundation leak and restore/replace the carpet and underlay by December 25, 2010. On December 14, 2010, the Tenant gave the Landlord short notice that she was moving out at the end of December, 2010. I do not find three days (December 11 to December 14) to be sufficient time to correct a leak in the foundation of a building and to replace or restore carpet and underlay.

Based on the testimony of both parties, the Landlord has established a monetary claim for unpaid rent and loss of rent for the months of December, 2010, and January, 2010, in the total amount of \$1,850.00.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security and pet damage deposits, together with accrued interest, towards partial satisfaction of his monetary award.

The Landlord has been successful in its application and is entitled to recover the cost of the \$50.00 filing fee from the Tenant.

The Landlord has established a monetary claim as follows:

Un paid rent and loss of rent	\$1,850.00
Less security deposit and accrued interest of \$3.28	\$465.78
Less pet damage deposit and accrued interest of \$1.77	\$251.77
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$1,182.45

Conclusion

I hereby grant the Landlord a Monetary Order in the amount of \$1,182.45 for service upon the Tenant. This Order 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.

Dated: May 27, 2011.
