



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC; MNSD; FF

Introduction

This is the Landlord's application for a Monetary Order for loss of income for the month of May, 2011; to retain the security deposit in partial satisfaction of its monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlord served the Tenants with the Notice of Hearing documents and copies of their documentary evidence, by registered mail sent on May 20, 2011.

Issues to be Decided

- Is the Landlord entitled to compensation for loss of revenue for the month of May, 2011, pursuant to the provisions of Section 67 of the Act?

Background and Evidence

This tenancy began on March 5, 2011. The tenancy agreement was a one year fixed term lease, due to expire on March 31, 2012. Monthly rent was \$1,325.00, payable on the first day of each month. In addition, there was a parking fee of \$25.00 per month. The Tenants paid a security deposit in the amount of \$662.50 at the beginning of the tenancy.

The Landlord's agent gave the following testimony and evidence:

- The Tenants gave written notice on March 31, 2011, that they would be moving out of the rental unit, but did not provide the date that they would be moving.
- Until recently, the rental property was being run by another management company. The Landlord's agent just started working for the Landlord in July, 2011, and therefore she was unsure of when the Landlord took over. During the Hearing, the Landlord's agent called her office and confirmed that the current Landlord started managing the building on April 15, 2011.
- The Landlord's agent is not certain when the Landlord advised the occupants of the Landlord's contact information.
- An agent of the Landlords went to the rental unit on April 30, 2011, to perform a move out inspection, but the Tenants' furniture was still in the rental unit and therefore no Condition Inspection Report was completed.
- The Tenants left a letter dated May 1, 2011, together with the keys to the rental unit, in the Landlord's drop box. The Landlord discovered these items on May 4, 2011. The letter stated that the Tenants had moved out of the rental unit.
- The rental unit was re-rented effective June 1, 2011.
- The Landlord seeks loss of revenue for the month of May, 2011.

The Tenants gave the following testimony:

- Within a week of moving into the rental unit, the Tenants discovered that some of the suites in the rental property were cultivating marijuana. There was a smell of fresh marijuana and marijuana smoke throughout the hallways and drug dealing occurred at night. The Tenants did not notice the smell of marijuana when they first viewed the rental unit.
- The Tenants were very concerned because their three children were exposed to the smoke daily and the Tenants did not feel safe in their own home.

- One day, the Tenants observed the neighbor across the hall leaving his suite with 2 large green garbage bags full of marijuana. The leaves were visible out of the top of the bags.
- The Tenants complained to the former manager, “Mimi”, who told the Tenants that one of the occupants had a license for medical marijuana and another occupant was an engineer and therefore the Tenants should not be concerned about fire hazards. The former manager also told the Tenants not to bother providing her with written notice because new management would be taking over soon.
- On March 15, 2011, the Tenants phoned “Mimi” and told her that they would be moving out. It did not appear as though the management of the rental property was taking their complaint seriously and the Tenants decided for the health and safety of themselves and their children that they could not stay in the rental unit.
- On April 28, the Landlords sent out a memorandum to all of the occupants of the rental property acknowledging that they had received complaints about marijuana in the rental property.

Analysis

Based on the testimony of both parties, I am satisfied that the Landlord was aware of concerns voiced by the Tenants and other occupants in the rental unit about the pervasive smell of fresh marijuana and marijuana smoke in the rental property and the occupants’ attendant loss of peaceful enjoyment. The Landlords sent out a memorandum to the occupants of the rental property on April 28, 2011, acknowledging these concerns.

Based on the undisputed testimony of the Tenants, I find that the former landlord was aware of the alleged breach, that the former landlord did not address the Tenants’ concerns, and that the former landlord knew that the Tenants were moving out of the rental unit because of their loss of peaceful enjoyment.

There was some inconsistency in the Landlord's agent's testimony. She testified that the Tenants did not provide sufficient written notice that they were moving out at the end of April, 2011, and yet she also testified that the Landlord's agent was expecting to perform a move out inspection on April 30, 2011.

Section 45(3) of the Act provides that a tenant may end a periodic tenancy (lease) before the end of its term if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, effective on a date after the landlord receives the notice.

In this case, the Tenants did not provide the former landlord with written notice of its failure to comply with a material term of the tenancy. However, I am satisfied that the former landlord was well aware of the alleged breach 6 weeks prior to the end of the tenancy and did not correct the situation.

The Landlord seeks loss of revenue for the month of May, 2011, but did not provide sufficient evidence of attempts made to mitigate, or minimize, that loss. Section 7(2) of the Act states:

- 7** (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The responsibility to mitigate is an essential element in a claim for damage or loss.

For the reasons stated above, I find that the Landlord has not proven its claim for compensation and I dismiss the Landlord's claim in its entirety.

The Landlord is holding the Tenants' security deposit in the amount of \$662.50 and I hereby order the Landlord to return forthwith. No interest has accrued on the security deposit. The Tenants are hereby provided a Monetary Order against the Landlord in the amount of \$662.50.

Conclusion

I hereby provide the Tenants a Monetary Order in the amount of \$662.50 for service upon the Landlord. 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: August 30, 2011.

Residential Tenancy Branch