



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 matter dealt with an application by the Landlords for compensation for a loss of rental income, for compensation for damage or loss under the Act or tenancy agreement, to recover the filing fee for this proceeding and to keep the Tenants' security deposit and pet damage deposit in partial payment of those amounts.

The Landlords said they served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on May 11, 2011 to a forwarding address provided by the Tenants. According to the Canada Post online tracking system, the Tenants received the Landlords' hearing packages on May 13, 2011. Based on the evidence of the Landlords, I find that the Tenants were served with the Landlords' hearing packages as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

Issue(s) to be Decided

1. Are the Landlords entitled to compensation for a loss of rental income?
2. Are the Landlords entitled to other compensation?
3. Are the Landlords entitled to keep the Tenants' security deposit and pet damage deposit?

Background and Evidence

This fixed term tenancy started on December 1, 2010 and was to expire on May 31, 2011 however it ended on April 30, 2011 when the Tenants moved out. Rent was \$1,400.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$700.00 and a pet damage deposit of \$700.00 at the beginning of the tenancy.

The rental property is a house. The Landlords said the Tenants rented the whole house but resided on the upper floor and sublet the lower floor. The Landlords said the Tenants gave them verbal notice on April 1, 2011 that they would be ending the tenancy at the end of April 2011 but claimed that their sub-tenants would be taking over the lease of the whole house. The Landlords said the Tenants' subtenants advised them around the end of April 2011 that they would not be leasing the whole house and also would be vacating at the end of April 2011. The Landlords said they immediately

advertised the rental unit in an online publication and in a local newspaper for availability in May 2011 however it could not be re-rented until June 2011. Consequently, the Landlords said they lost rental income for May 2011.

The Landlords also said two curtain toppers were missing from the rental unit at the end of the tenancy which they believed had a value of \$50.00. The Landlords also sought to recover a late rent payment fee of \$25.00 for May's rent.

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.

I find that Tenants ended the tenancy on April 30, 2011 although they agreed to rent the rental unit until May 31, 2011. I also find that the Landlords took reasonable steps to try to re-rent the rental unit for the month of May 2011 but were unable to do so. As a result, I find that the Landlords are entitled to be compensated for a loss of rental income for May 2011 in the amount of \$1,400.00.

Section 7 of the Regulations to the Act provides that a Landlord may charge a fee of no more than \$25.00 for the late payment of *rent* provided that the Parties' tenancy agreement contains a term to that effect. However, I find that once the tenancy ended on April 30, 2011, the remedy to which the Landlords were entitled was no longer unpaid rent but compensation for lost rental income. Consequently, I find that the Landlords are not entitled to a late payment fee for May 2011 and that part of their application is dismissed without leave to reapply.

The Parties completed a move in condition inspection report on November 29, 2010 and a move out condition inspection report on April 30, 2011. The move out condition inspection report shows that 2 curtain toppers were missing from the rental unit at the end of the tenancy. The Landlords claimed that they believed (based on a verbal estimate from the owner) that the curtain toppers had a value of \$50.00. However, I find that this evidence is hearsay and unreliable and in the absence of any other evidence of value, I find that there is insufficient evidence to support the Landlords' claim for these items. Consequently, this part of the Landlords' claim is also dismissed without leave to reapply.

As the Landlords have been successful on their claim, they are entitled pursuant to s. 72(1) of the Act to recover from the Tenants the \$50.00 filing fee for this proceeding.

Consequently, I find that the Landlords are entitled to a total monetary award of \$1,450.00. I order the Landlords pursuant to s. 38(4) of the Act to keep the Tenants' security deposit of \$700.00 and pet damage deposit of \$700.00 in partial payment of the monetary award. The Landlords will receive a Monetary Order for the balance owing of \$50.00.

Conclusion

A Monetary Order in the amount of **\$50.00** has been issued to the Landlords 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: August 16, 2011.

Residential Tenancy Branch