



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The landlord, both tenants and two witnesses for the tenants participated in the conference call hearing.

The tenants submitted evidence that the landlord did not receive. The tenants faxed their evidence to the landlord at a fax number proved in the landlord's application for dispute resolution. I therefore admitted the tenants' evidence.

At the outset of the hearing the landlord sought to amend his monetary claim to remove the claim for liquidated damages, as the tenancy agreement failed to specify the amount of the liquidated damages, and also to reduce his claim for loss over revenue for June 2011 to \$200, on the basis that the landlord was able to re-rent the unit for June, but at a reduced rent. I allowed the amendments.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on January 15, 2011 as a fixed term tenancy to end on July 1, 2011. Rent in the amount of \$1200 plus \$110 for utilities was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$600. The tenants failed to pay rent in the month of April 2011 and by April 15, 2011 both tenants had moved out of the rental unit.

The evidence of the landlord was as follows. The landlord attended at the rental unit between March 25 and 28, 2011 to address some repairs. At that time, the female tenant had moved out, and the male tenant wanted to make arrangements to move out. On March 27, 2011 the tenants signed a document titled "Early Termination By Tenant," in which the tenants gave notice that they were terminating the tenancy on April 30,

2011, and they understood they were responsible for paying rent up to June 30, 2011 if the landlord was unable to re-rent. The tenants' rent cheque for April bounced, and the male tenant moved out on April 15, 2011. The landlord attempted to re-rent the unit as soon as possible, by putting ads on Craigslist and Used Victoria as soon as the tenants gave notice. However, because the rental market was soft, the landlord was unable to re-rent until June 1, 2011, at a rent reduced from \$1200 to \$1000. The landlord has claimed \$1310 for April 2011, \$1310 for May 2011 and \$200 for June 2011.

The response of the tenants was as follows. The reason the tenants moved out early was because the rental unit was unliveable. There were several problems with the unit, the worst of which was that the unit was always freezing cold. On April 4, 2011 the tenants and the landlord's agent signed a document which confirmed that the tenants would be vacating on April 15, 2011 and that "as long as the house passes the checkout list there will not be any charges to [the tenants]." On April 15, 2011 the tenants and the landlord's agent carried out a move-out inspection and signed the move-out inspection report, which showed that the landlord was not claiming any amount for damages or any other costs.

Analysis

I find that the tenants did not provide sufficient evidence to establish that the rental unit was unliveable and that they were therefore entitled to break the lease. If there are problems with a rental unit and the landlord does not carry out a request for repairs, it is open to the tenant to apply for an order that the landlord carry out repairs. The tenants instead chose to break their lease. I further find that the written agreement between the tenants and the landlord's agent dated April 4, 2011 did not preclude the landlord from claiming for unpaid rent, only for damage to the rental unit. I therefore find that the landlord is entitled to recovery of rent for April 2011, in the amount of \$1310.

In regard to the landlord's claim for lost revenue, I find that the landlord did not provide sufficient evidence that he mitigated lost revenue by taking all reasonable steps to re-rent the unit as quickly as possible. The landlord did not provide copies of any of the postings for the rental unit. I therefore deny the landlord's claim for lost revenue for May and June 2011.

As the landlord's claim was partially successful, I find that he is entitled to partial recovery of his filing fee, in the amount of \$25.

Conclusion

The landlord is entitled to \$1335. I order that the landlord retain the security deposit of \$600 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$735. This order may be 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*.

Dated: August 15, 2011.

Residential Tenancy Branch