



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the Landlord for an order for monetary damages arising from the Tenants breaking a fixed term lease early, to retain all or part of the SD, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Both parties have submitted portions of their evidence late, contrary to the rules of procedure, and these submissions were not considered.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Did the Tenants breach the term lease, entitling the Landlord to monetary compensation?

Background and Evidence

On August 31, 2011, the parties entered in a one year, fixed term tenancy agreement, which was to run from September 1, 2011, until August 31, 2012. The Tenants were to pay \$1,580.00 in rent on the first day of each month. The Tenants paid the Landlord a security deposit of \$790.00 on July 19, 2011.

The tenancy agreement contained a liquidated damages clause requiring the Tenants to pay the Landlord \$400.00 if they ended the tenancy before the end of the original term.

On or about December 9, 2011, the Tenants gave the Landlord written notice they were ending the tenancy effective January 31, 2012. In this notice the Tenants state they are ending the tenancy due to unforeseen and irreversible family complications.

On or about December 29, 2011, the Tenants wrote the Landlord a letter and provided her with a cheque for \$1,190.00 in partial payment of January 2012 rent. The Tenants explained that the Landlord may retain the \$400.00 for liquidated damages from the security deposit paid, and use the remaining \$390.00 from the deposit for the balance of January 2012 rent. The Tenants then allege there are a number of deficiencies with the rental unit and allege these have existed from the start of the tenancy.

The Landlord replied to this letter and informed the Tenants they were required to pay the Landlord the entire amount of rent for January of 2012, as the Tenants were unable to deduct any amount from rent, or use the security deposit to pay rent, without an order from the Branch allowing them to do so. The Landlord also explains that some of the deficiencies they point out are due to the fact that the Tenants did not properly heat or ventilate the rental unit. The Landlord also explains that one of the complained about problems was not there at the time of the incoming condition inspection report, when the tenancy started.

The Landlord submitted evidence that she began advertising the rental unit on December 16, 2011, and increased the advertising on December 19, 2011, and then increased it again in January of 2012. From the evidence of the Landlord it appears there were several "showings" of the rental unit to prospective renters. The Landlord eventually lowered the rent rate to \$1,500.00. The Landlord had new renters in the rental unit on February 4 of 2012, paying a monthly rent of \$1,500.00

At the end of the tenancy the Landlord and the Tenants performed an outgoing condition inspection report. The Tenants were charged with utilities, cleaning, lightbulb replacement and other charges, which they paid to the Landlord. One of the charges was advertising the Landlord had paid for in the amount of \$37.70. In total the Tenants paid the Landlord \$604.00 for these charges.

In this Application the Landlord claims \$163.44 for three days of lost rent in February of 2012, and \$560.00 for the difference between the rent in the tenancy agreement of the Tenants and the new renters of \$80.00 per month for seven months, for a total claim of \$723.44.

The Tenants argue they should not have to pay \$37.70 for advertising as this was included in the amount collected under the liquidated damages clause.

The Tenants were also upset that the Landlord charged them for light bulbs and a smoke alarm battery. The Tenants testified that at the outset of the tenancy there were light bulbs missing from the rental unit and they purchased bulbs. They testified that at the end of the tenancy they removed the bulbs and vacated with them. The Tenants also testified they removed the battery from the smoke alarm when they vacated.

The Tenants further argue that they feel the Landlord has manipulated them and has treated them unfairly. The Tenants explained they are young students, new to renting.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Tenants breached the Act and tenancy agreement by ending the tenancy contrary to the Act and tenancy agreement.

Under section 45 of the Act, the Tenants were not allowed to end a fixed term tenancy prior to the end of the term. The tenancy agreement itself is a legal, binding contract, which the Tenants had promised to abide by. Instead, they broke the contract.

If the Landlord had breached a material term of the tenancy agreement and the Tenants requested in writing that the Landlord correct the breach within a reasonable time and it was not corrected by the Landlord, then the Tenants might have ended the tenancy under section 45(3) of the Act. However, there is no evidence from the Tenants in this case that would support a claim that the Landlord breached a material term of the tenancy agreement. In fact, I find the Landlord has acted in accordance with the Act and I did not find there was malicious intent against the Tenants in these business transactions.

The Landlord mitigated the loss as required by the Act, by quickly advertising, showing the rental unit, and then reducing the rate of rent. The Landlord had new tenants move into the rental unit on February 4, 2012. Had the Landlord not found new renters so quickly, the Tenants might have been liable for entire month or even months of rent, until new renters were found. I also note it was also open to the Tenants to attempt to find new renters and sublet the rental unit. However, they did not do this.

Section 67 of the Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Landlord has suffered a loss of rent due to the Tenants' breach of the tenancy agreement and the Act. I find the Landlord lost rent for three days in February of 2012, and for seven months of the tenancy agreement at a reduced rental rate of \$80.00 per month. I allow the Landlord \$163.44 for per diem rent in February of 2012, and seven months of reduced rent at \$80.00 per month, in the amount of \$560.00, or \$723.44 in total.

As to the advertising costs, I accept the argument of the Tenants that this was included in the liquidated damages and the Landlord should not be compensated for this twice.

Therefore, I reduce the \$723.44 allowed by \$37.70 and find that the Landlord has established a total monetary claim of **\$737.74**, comprised of loss of rent in the amount of \$685.74 and the \$50.00 fee paid by the Landlord for this application.

I allow the Landlord to retain \$737.74 from the security deposit of \$790.00, and order the Landlord to return the balance of **\$52.26** to the Tenants. I have granted and issued the Tenants a monetary order in these terms.

This order must be served on the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Lastly, as to the issue of light bulbs and batteries for smoke alarms, both parties should refer to the policy guidelines to the Act to determine responsibilities for these.

I have also sent the Tenants a copy of a guidebook to the Act, in order that they may learn about their rights and obligations as new tenants in British Columbia.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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, 2012.

Residential Tenancy Branch