



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, FF

Introduction

This hearing was scheduled in response to the landlords' application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlords are entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on January 15, 2010. Monthly rent of \$1,100.00 was payable in advance on the 15th day of each month, and a security deposit of \$550.00 was collected.

There is no dispute that on August 5, 2011, the tenants gave notice to end tenancy effective September 1, 2011. However, the parties take different positions in regard to how notice was given; the landlord claims that notice was given verbally, whereas the tenant claims that notice was given in writing and that the written notice was delivered in care of the tenant's brother at his place of work.

It is not clear whether or not there was any verbal agreement or mutual understanding reached between the parties in relation to how much rent was to be paid. In any event, there is no dispute that rent was paid only to September 1, 2011.

Further to recovery of the filing fee, in this application the landlords seek compensation equal to ½ month's rent for the first half of September, in light of what the landlords claim was insufficient notice to end tenancy. The landlords also appear to want to recover some of what they consider was an unfair amount of compensation awarded to the tenants pursuant to a previous hearing held on January 3, 2012 (file # 781451). In

that decision the dispute resolution officer awarded the tenants compensation in the amount of double the security deposit pursuant to section 38(6) of the Act.

The landlord testified that following the end of this tenancy, no advertising for new renters was undertaken. Rather, the unit was listed for sale beginning in approximately mid-September 2011. Presently the unit remains unrented and is still listed for sale.

Finally, during the hearing the parties exchanged views on the disposition of the unit keys at the end of tenancy.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

For information, the attention of the parties is drawn to particular sections of the Act as set out below.

Section 52 of the Act addresses **Form and content of notice to end tenancy**, and provides:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45(1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Section 44 of the Act addresses **How a tenancy ends**. Section 45 of the Act speaks more specifically to **Tenant's notice**, and provides in part:

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.

Section 37 of the Act speaks to **Leaving the rental unit at the end of a tenancy**, and provides in part:

37(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement**, and provides in part:

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.

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that when the tenancy ended on September 1, 2011, the tenants vacated the unit and surrendered full and peaceable vacant possession on that same date.

In regard to the disposition of the security deposit following the end of tenancy, I have no authority to revisit that matter as it was previously decided in the decision by date of January 3, 2012.

In view of the absence of any action taken by the landlords to mitigate a loss of rental income for the period encompassing the first half of September 2011, that aspect of the application is hereby dismissed. As previously stated, the landlords' reasons for not advertising for new renters are directly related to their intent to sell the unit. Indeed, the

parties acknowledged during the hearing that the landlords' realtor sought entry to the unit in order to take pictures prior to the end of the tenancy.

As the landlords have not achieved the outcome sought, the application to recover the filing fee is also hereby dismissed.

Conclusion

The landlords' application is hereby dismissed in its entirety.

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: April 05, 2012.

Residential Tenancy Branch