



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution made by the Landlord for a monetary order for unpaid rent, for compensation under the Act or tenancy agreement, for damage to the rental unit, to keep all or part of the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

The Landlord appeared, gave affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified he served the Tenants with the Application and Notice of Hearing by sending registered mail to the forwarding address the Tenants provided to the Landlord, which is the address for the Agent for the Tenants. The mail was sent on March 14, 2012, and is deemed served five days later under the Act. I note that refusal or neglect to accept registered mail is not a ground for Review under the Act. I find the Tenants have been duly served in accordance with the Act.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

I note that at the outset of the hearing, the Landlord withdrew his claim for damages to the rental unit. As I had not heard evidence on the merits of this portion of the claim, I dismiss the Landlord's claims for damages to the rental unit with leave to reapply.

Issues(s) to be Decided

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

Background and Evidence

On or about January 14, 2011, the Tenants signed the tenancy agreement, which was for a fixed term from January 16, 2011 to February 16, 2012 (the "Tenancy Agreement"). The Tenants paid the Landlord a security deposit of \$1,100.00 and the monthly rent was \$2,300.00.

On or about November 13, 2011, the Tenants sent the Landlord an email informing him they were leaving the rental unit at the end of December 2011, as they were moving overseas. The Tenants wanted to be released from the Tenancy Agreement.

The Landlord replied to the Tenants explaining if they wished to move out by the end of December of 2011, they would owe him the rent for the remainder of the tenancy, up to February 16, 2012.

The parties also exchanged emails regarding the Tenants opportunity to sublet the rental unit to other renters, however, the Tenants did not provide any references or financial information for the parties they proposed for the sublet. Therefore, the sublet did not occur.

The Tenants vacated the property sometime in December of 2011. The Tenants had paid rent for January 2012.

The Landlord now claims for prorated rent for 16 days of February of 2012, in the amount of \$1,268.97, and the filing fee for the Application.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Tenants breached the Tenancy Agreement and the Act, without authority to do so.

The Tenancy Agreement is a binding legal contract which both parties must abide by.

In British Columbia a tenancy may only end if done so in accordance with the Act.

Under section 45(3) of the Act the Tenants could not end the tenancy earlier than the end of the fixed term date of February 16, 2012, unless there was some authority under the Act for them to do so. For example, if the Tenants felt the Landlord was in breach of a material term of the tenancy agreement, they could have written to the Landlord with a

request to correct the breach and provide a reasonable time to do so. If the Landlord did not correct the problem within that time, then the Tenants might have ended the tenancy by giving notice earlier than the end of the fixed term.

Here the Tenants had no authority under the Act to end the tenancy. Therefore, as the Tenants breached the Tenancy Agreement and the Act by ending the tenancy without authority to do so, I find the Landlord is entitled to compensation for loss of rent.

Section 67 of the Residential Tenancy 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 the breaches by the Tenant have caused the Landlord to suffer a loss of rent for 16 days in February of 2012. I find the prorated rent for this period is \$1,268.97.

Therefore, I find that the Landlord has established a total monetary claim of **\$1,318.97**, comprised of \$1,268.97 in lost rent and \$50.00 towards the fee paid by the Landlord for this application.

I order that the Landlord retain the deposit of \$1,100.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$218.97**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: May 25, 2012.

Residential Tenancy Branch