



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlords for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of this application. The landlords filed an application for dispute resolution on March 5, 2012 and then filed an amended application on April 2, 2012 which increased the monetary amount claimed.

The landlords and the tenants attended the conference call hearing, all gave affirmed testimony and were given the opportunity to cross examine each other. The landlords provided evidence in 2 packages, one of which was not provided to the tenants. The tenants also provided evidence to the landlords and to the Residential Tenancy Branch. All evidence, with the exception of the evidence of the landlords that was not provided to the tenants has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Are the landlords entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Are the landlords entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

This tenancy began on April 1, 2011 and ended on March 1, 2012. The parties entered into a new fixed term tenancy agreement on December 30, 2011 to expire on April 30, 2012. Rent in the amount of \$1,500.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. The landlords collected a security deposit in the amount of \$750.00 from the tenants on March 10, 2011 and a pet damage deposit in the amount of \$250.00 on April 1, 2011, all of which is still held in trust by the landlords.

Move-in and move-out condition inspection reports were completed, and the landlords testified that there were no damages to the rental unit.

The landlords testified that the tenants provided the landlords with a letter on January 25, 2012 stating that the tenants could no longer afford the rent and were moving from the rental unit. A copy of the letter was provided for this hearing.

On February 2, 2012 the landlords placed advertisements on Craigslist and Used Victoria, which are free internet advertising sites, as well as posting an advertisement at UVIC for students and faculty. The first 2 advertisements ran for 45 days and were re-run to keep the advertisements at the top of the lists. The UVIC advertisements ran for 15 days and were run again on March 12 and April 16, 2012. Advertisements were also placed in the local newspaper to run from February 24 to 26, 2012 and again from March 23 to 25, 2012, April 13 to 15, 2012 and April 27 to 29, 2012. Originally the advertisements stated that rent was \$1,500.00 per month, was reduced to \$1,450.00 and then reduced again to \$1,400.00 per month. The landlords also notified Pemberton Homes, which may have assisted for word-of-mouth advertising. The landlords testified that the UVIC advertisements cost \$20.00 per advertisement, and the landlords had placed three. The local newspaper advertisements cost \$48.93 each time and there are four advertisements. The landlords also stapled a sign to a pole outside the rental unit. The rental unit has still not been re-rented although it has been shown every couple of weeks or more.

The landlords provided a copy of an advertisement at UVIC which states that the rent is \$1,550.00 per month, and the advertisement commences on February 6, 2012, which is also the date of the \$20.00 receipt also provided. The landlords also provided a copy of a receipt from the local newspaper which states that the advertisement would run from February 24, 2012 to February 26, 2012 for 4 insertions at a cost of \$48.93. Also provided is a copy of an advertisement on Used Victoria which advertises the rental unit at \$1,550.00 per month which was posted on February 2, 2012 and expired on March 3, 2012. A copy of the renewal has also been provided which shows that the advertisement was run from March 4, 2012 to April 3, 2012 for \$1,550.00 per month. Another advertisement has been provided for Craigslist which states that the rental unit was advertised on February 2, 2012 for \$1,500.00 per month and was available for rent for March 1st. Another states \$1,550.00 per month and was placed on February 13, 2012.

The landlords received a forwarding address in writing from the tenants on March 1, 2012.

The landlords claim 2 month's rent, or \$3,000.00 in addition to advertising costs of \$60.00 for UVIC and \$195.72 for the 4 local newspaper advertisements.

One of the tenants testified that the parties signed the tenancy agreement and at the time, 4 months didn't seem like a long time but the tenants became overwhelmed by bills. The tenants did not want to chance being evicted for unpaid rent, so one of the tenants had a conversation with one of the landlords. The landlords seemed okay with the tenancy ending early, and the tenants were completely accommodating about showings and construction going on in the building.

Another tenant testified that text messages were exchanged between the tenant and the landlords, and the tenant would forward those messages to the other tenants. The tenant had a conversation with the landlords on January 2, 2012 advising the landlords that their financial situation was not good and they could no longer afford the rent. The landlords advised the tenant that they required something in writing in order to start showing the rental unit, but the tenant didn't get the letter done until January 25, 2012. A copy of the letter was provided for this hearing which states that the tenants would be vacating the rental unit "... on or before the end of our current lease. (Depending on when you can find renters)" The tenant stated that the landlord provided a letter to the tenants dated February 1, 2012 stating that the landlords would try to re-rent the rental unit but if it didn't rent, the landlords would take the tenants to arbitration for breaking the fixed term.

The third tenant testified to being present when the other tenant and the landlord had the conversation. The landlords seemed understanding of the tenants' situation.

When the tenants received a copy of the new tenancy agreement, it was accompanied by a Notice of Rent Increase effective May 1, 2012 which was after the expiry date of the fixed term.

Analysis

The *Residential Tenancy Act* states that a party who makes a claim must do whatever is reasonable to reduce any loss suffered. The *Act* also states that a tenant cannot end a fixed term tenancy prior to the end of the fixed term without the landlords' consent. In this case, it's clear that the tenants ended the tenancy prior to the end of the fixed term. However, one of the landlords testified that the rental unit was advertised for \$1,500.00 and was reduced in later advertisements to \$1,450.00 and then further to \$1,400.00 per month. The advertisements provided for this hearing state \$1,550.00 which is more rent

than the tenants had been paying. In fact, the Craigslist advertisement on February 2, 2012 states \$1,500.00 but was raised to \$1,550.00 on the February 13, 2012 advertisement. All other advertisements provided show \$1,550.00 per month.

In order to be successful in a claim for damages or loss of revenue, the claiming party must pass the 4 part test for damages:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the tenancy agreement or the *Act*;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate, or reduce such damage or loss.

In this case, I am satisfied that the landlords have established that the loss exists and that it exists as a result of the tenants' failure to comply with the tenancy agreement. I am also satisfied that the amount of such loss is \$1,500.00 per month rent for 2 months. However the evidence provided by the landlords is not consistent with the testimony; the evidence shows that the landlords advertised for an increased amount of rent. It may very well be that the rental unit was advertised at a lower rate later, but the landlords had a duty to mitigate when they received the tenants' notice to vacate. In the circumstances, I find that the landlords have not proven that they have mitigated a loss for the first month that the rental unit was vacant.

The landlords still hold a security deposit in the amount of \$750.00 and a pet damage deposit in the amount of \$250.00. The *Act* also requires a landlord to return a security deposit and/or pet damage deposit, or apply for dispute resolution claiming against the deposits within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or the landlord must pay the tenant double the amount of such deposits. The *Act* also states that a landlord may only make a claim against a pet damage deposit for damages caused by a pet. The landlords testified that no damage existed in the rental unit at the end of the tenancy and that they received a forwarding address in writing from the tenants on March 1, 2012. The landlords filed the original application for dispute resolution on March 5, 2012 which is well before the 15 day period, however, the landlords made no claim for damages caused by a pet. Therefore, I must find that the landlords hold a security deposit in the amount of \$750.00 which must be credited to the tenants and that the landlords have failed to comply with the *Act* by failing to return the pet damage deposit to the tenants. Therefore, I must order that double the amount of the pet damage deposit be credited to the tenants, for a total in deposits of \$1,250.00.

With respect to the landlords' claim for advertising costs, I find that had the tenants not moved from the rental unit, the landlords may not have had to bear those costs. I accept the testimony of the landlords that the cost was \$20.00 each for 3 advertisements at UVIC and \$48.93 each for 4 advertisements in the local newspaper. The landlords provided evidence of the individual costs and I find that the landlords have established a claim in the amount of \$255.72.

In summary, I find that the landlords have established a claim in the amount of \$1,500.00 for loss of revenue and \$255.72 for advertising, which must be set off from the deposits held in trust. Since the landlords have been partially successful with the application, the landlords are also entitled to recovery of the \$50.00 filing fee for the cost of the application.

DESCRIPTION	DEBIT	CREDIT	BALANCE
Advertising UVIC	\$60.00		\$1,560.00
Advertising Newspaper	\$195.72		\$1,755.72
Filing Fee	\$50.00		\$1,805.72
Less: Security Deposit		\$750.00	\$1,055.72
Less: Pet Damage Deposit (Doubled)		\$500.00	\$555.72

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$555.72. This order is final and binding on the parties and may be enforced.

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: May 07, 2012.

Residential Tenancy Branch