



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF, OPR

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"), requesting an order of possession for unpaid rent, for a monetary order for damage to the rental unit, for unpaid rent and money owed or compensation for damage or loss, for authority to retain the tenants' security deposit and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

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.

Preliminary Issue:

The landlord's application contained a request for an order of possession; however, the rental unit has been vacated by the tenants. As a result, I have excluded from consideration the landlord's request for an order of possession.

Issue(s) to be Decided

Is the landlord entitled to a monetary order and for authority to retain the tenant's security deposit?

Background and Evidence

I heard undisputed testimony that this one year, fixed term tenancy began on May 1, 2011, that it ended on March 15, 2012, instead of at the end of the fixed term, which was to be April 30, 2012, monthly rent was \$1400.00, plus \$50.00 for parking and the

tenants paid a security deposit of \$700.00 at the beginning of the tenancy on or about March 31, 2011.

The landlord's monetary claim is in the amount of \$3672.00, which is comprised of unpaid rent of \$1450.00 for March 2012, loss of revenue of \$1400.00 for April 2012, liquidated damages of \$275.00, move-out deductions of \$522.00, and a NSF fee of \$25.00.

The landlord's relevant evidence included the tenancy agreement, a returned rent cheque for March 2012, a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), the move out inspection report and a painting invoice.

The landlord submitted that the tenants' rent cheque for \$1450.00 was returned to the landlord due to insufficient funds in the tenants' account. The landlord stated that as a result of the tenants not paying rent for March 2012, the tenants were issued the Notice, which listed unpaid rent for March 2012, in the amount of \$1450.00.

The landlord submitted that the tenants gave their notice of their intent to vacate and that they moved out on March 15, 2012, without paying rent for March 2012.

Due to the returned cheque, the landlord submitted that the tenants were obligated to pay a fee for that charge.

Additionally the landlord submitted that they were unable to re-rent the rental unit for April 2012, and therefore they are entitled to loss of revenue for that month due to the fixed term.

When questioned, the landlord stated that their method in re-renting the rental unit was to place a sign on the apartment and post an ad on Craigslist. The landlord also stated that he was unaware of the date the rental unit was listed as available.

As to the liquidated damages, the landlord stated that this payment was intended to compensate the landlord for expenses in re-renting the rental unit prior to the end of the fixed term.

As to the claim for damage to the rental unit, the landlord submitted that the tenants left nail holes in the walls for pictures and a television, which required the landlord to have the walls repainted.

When questioned, the landlord stated that the tenants were allowed to hang pictures, but that the landlord expected them to return the rental unit back to the original condition.

Additionally, the landlord stated that the blinds were dusty and that the toilet seat was missing.

In response, the tenants submitted that the rental unit was left in better shape than when they moved in, as they had to spend four hours cleaning it just to move in and they spent at least ten hours in cleaning the rental unit prior to moving out.

The tenant submitted that it was necessary to replace the toilet seat when they moved in as it was disgusting.

The tenant submitted that all the walls were prepped for painting when they moved out.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the landlord to prove damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

I find the tenants were obligated to pay rent for the month of March 2012 under the terms of the tenancy agreement and that they failed to do so. I therefore find that the landlord has established a monetary claim of \$1450.00 for unpaid rent for March 2012.

I also find that under the tenancy agreement, the tenants agreed to pay a NSF fee of \$25.00 for any returned rent cheques. I therefore find that the landlord has established a monetary claim of \$25.00.

As to loss of revenue for April 2012, I accept that the tenants provided insufficient notice to end the tenancy early, by their failure to give notice in writing at least one clear month before the effective date of the notice to end.

However, I find the landlord failed to submit proof that they advertised the rental unit or made any other attempts made to market the rental unit in order to mitigate their loss.

In the absence of proof by the landlord of advertisements or other proof of marketing, I find that the landlord submitted insufficient evidence to prove step 4 in the test for damage and loss. With the lack of evidence, I cannot determine that the landlord made reasonable attempts to mitigate their loss.

I therefore **dismiss** the landlord's claim for loss of revenue for April 2012, in the amount of \$1400.00, without leave to reapply.

I find the tenancy agreement provides that the tenants agreed to pay a fee of \$275.00 in the event the tenants gave notice to terminate the tenancy agreement prior to the expiration date. I find this term is a liquidated damages clause that is intended to offset costs associated with procuring a new tenant. I do not find the amount is unreasonable and I do not find it is a penalty. Therefore, I find the tenant responsible for paying the liquidated damages fee of \$275.00 and that the landlord has established a monetary claim in that amount.

As to the landlord's claim for damages, the Residential Tenancy Branch Policy Guidelines allow a tenant to hang pictures and the landlord may set rules as to how this can be done.

In the case before me, the landlord did not establish that the tenants were provided rules in hanging their pictures. Additionally, there was no proof that the number of nail holes was excessive. Due to this, I find that the landlord has insufficient evidence that the tenants were responsible for the nail holes caused by hanging their pictures.

As to the remaining claims for damage, the landlord did not provide evidence that they suffered a loss of \$100.00 for dusty blinds and \$30.00 for a missing toilet seat.

Due to the above, I find the landlord submitted insufficient evidence of damage to the rental unit and I therefore dismiss their claim for \$522.00.

I find the landlord's application had merit and I allow them recovery of the filing fee of \$50.00.

Conclusion

I find the landlord has established a total monetary claim of **\$1800.00**, comprised of unpaid rent for March 2012, in the amount of \$1450.00, a NSF fee of \$25.00, liquidated damages for \$275.00 and recovery of the filing fee of \$50.00.

I direct the landlord to retain the tenants' security deposit of \$700.00 in partial satisfaction of their monetary claim and grant them a monetary order for the balance due in the amount of \$1100.00.

I am enclosing the monetary order for \$1100.00 with the landlord's Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement should the tenants fail to comply with this monetary order.

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 7, 2012.

Residential Tenancy Branch