



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 is the Landlords' application for a Monetary Order for damage to the rental unit, unpaid rent and compensation for damage or loss under the Residential Tenancy Act (the "Act"), regulation or tenancy agreement; to retain the security deposit in partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenants.

The Landlords gave affirmed testimony at the Hearing.

The Landlords testified that the Notice of Hearing documents were mailed to each of the Tenants, via registered mail on March 7, 2012, to the forwarding address provided by the Tenants on the Condition Inspection Report.

The Landlords testified that they also provided copies of their documentary evidence to each of the Tenants, by registered mail on April 14, 2012, to the same forwarding address.

The Landlords stated that all of the registered mail was returned to them "no such address". The Landlords provided the receipts and tracking numbers for the registered documents along with a copy of the Condition Inspection Report containing the Tenants' forwarding address.

Based on the Landlord's affirmed testimony and documentary evidence, I am satisfied that the Tenants were duly served with the Notice of Hearing documents by registered mail pursuant to the provisions of Section 89(1)(d) of the Act. Service in this manner is deemed to be effected 5 days after mailing the documents. Despite being deemed served with the Notice of Hearing documents, the Tenants did not sign into the teleconference and the Hearing proceeded in their absence.

Issues to be Decided

- Are the Landlords entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

The Landlords gave the following testimony:

A copy of the tenancy agreement was provided in evidence. This tenancy started on August 17, 2012, for a fixed term ending August 31, 2012. Monthly rent was \$4,000.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$2,000.00 at the beginning of the tenancy.

The Landlords testified that the Tenants ended the tenancy early and moved out of the rental unit on February 29, 2012. The Landlords testified that the Tenants were aware of their responsibilities under the lease and agreed to pay costs incurred by the Landlord for finding a new tenant plus costs for damages to the rental unit and the liquidated damages fee provided for in the tenancy agreement. The Landlords testified that the Tenants told them they had paid the strata move-out fee of \$200.00, but that they had not. The Landlords stated that the strata corporation billed the Landlords for the move out fee. The Landlords provided a copy of an e-mail from the Tenants and the strata corporation's move-out reservation in evidence.

The Landlords submitted that it was a bad time of year to find a new tenant, so they hired a real estate agent who was able to aggressively market the rental unit and re-rented it effective March 13, 2012, for a reduced rent of \$3,950.00 per month. The Landlords testified that they attempted to minimize their loss and to help the Tenants out, too, so they wouldn't have to pay \$4,000.00 a month for each month that the rental unit was vacant. The Landlords provided a copy of the real estate agent's invoice in evidence.

The Landlords seek a monetary award, calculated as follows:

Description	Amount claimed
Loss of income (March 1 – 12 inclusive)	\$1,548.39
Difference in rent for remainder of term of lease (6 months x \$50.00)	\$300.00
Real Estate agent's fee	\$2,249.96
Strata move-out fee	\$200.00
Costs for damages, as agreed on Condition Inspection Report	\$300.00
Liquidated damages	\$400.00
Recovery of filing fee	\$100.00
Cost to send documents by registered mail	\$39.69
TOTAL MONETARY CLAIM	\$5,138.04

Analysis

Section 67 of the Act states that if damage or loss results from a party not complying with the 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. Based on the undisputed testimony and documentary evidence provided by the Landlords, I find that the Tenants breached the tenancy agreement by ending the tenancy before the end of its term, and that the Landlords have suffered a loss as a result of that breach.

I find that the Landlords are entitled to recover their loss of income from March 1 – 12, 2012, from the Tenants, in the amount of **\$1,548.39**.

Section 7(2) of the Act provides that 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. Monthly rent was \$4,000.00, and I find that in hiring a real estate agent at a cost of **\$2,249.96**, the Landlords were attempting to minimize their loss. Therefore, I allow this portion of the Landlords' claim.

The tenancy agreement provides for liquidated damages in the amount of \$400.00 for "costs of re-renting the rental unit". In this case, the costs were higher and have been allowed under the circumstances. Therefore, having been allowed at a higher amount, I decline to award an additional \$400.00. This portion of the Landlords' application is dismissed.

In order to mitigate their loss of revenue, the Landlords re-rented the rental unit at a lesser rent and I allow the Landlords' claim in the amount of **\$300.00** to recover that loss from the Tenants.

The Condition Inspection Report indicates that the Tenants agreed to pay **\$300.00** for damages and this portion of the Landlords' claim is allowed.

The Landlords have applied to recover the cost of serving the Tenants by registered mail. This is a cost that is not provided for in the Act, and this portion of their application is dismissed.

I accept the Landlords' undisputed affirmed testimony that the strata corporation has billed them for the Tenants' move-out fee and I allow this portion of their claim in the amount of **\$200.00**.

The Landlords have been partially successful in their application and I find that they are entitled to recover the cost of the filing fee that they would have had to pay for the monetary order they have established, which is **\$50.00** for claims under \$5,000.00.

The Landlords have established a monetary award, calculated as follows:

Description	Amount allowed
Loss of income (March 1 – 12 inclusive)	\$1,548.39
Difference in rent for remainder of term of lease (6 months x \$50.00)	\$300.00
Real Estate agent's fee	\$2,249.96

Strata move-out fee	\$200.00
Costs for damages, as agreed on Condition Inspection Report	\$300.00
Partial recovery of filing fee	<u>\$50.00</u>
TOTAL MONETARY AWARD	\$4,648.98

Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlords may apply the **\$2,000.00** security deposit towards partial satisfaction of their monetary award. No interest has accrued on the security deposit.

I hereby provide the Landlords a Monetary Order in the amount of **\$2,648.98** for service upon the Tenants.

Conclusion

I hereby provide the Landlords a Monetary Order in the amount of **\$2,648.98** for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

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 15, 2012.

Residential Tenancy Branch