



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR; MNDC, FF

Introduction

This is the Landlord's application for a Monetary Order for unpaid rent and compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants.

The Landlord's agent gave affirmed testimony at the Hearing.

The Landlord's agent testified that the Notice of Hearing documents were mailed to each of the Tenants, via registered mail, to the address provided by the Tenants at the end of the tenancy. The Landlord provided the registered mail receipts and tracking numbers for the registered documents. The Landlord's agent testified that both packages were returned to the Landlord, "unclaimed".

Based on the affirmed testimony of the Landlord's agent and the documentary evidence provided by the Landlord, I am satisfied that both of the Tenants were duly served with the Notice of Hearing documents by registered mail. Service in this manner is deemed to be effected 5 days after mailing the documents, whether or not the parties chose to accept delivery of the documents. Despite being 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

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

The Landlord's agent gave the following testimony and evidence:

The Tenants signed a term lease, a copy of which was provided in evidence. The term was to end on September 30, 2012. Monthly rent was \$1,100.00, due the first day of each month. The Tenants paid a security deposit in the amount of \$550.00 on August 15, 2011.

On November 28, 2011, the Landlord received an e-mail from the Tenants advising that they had moved out of the rental unit. A copy of the e-mail was provided in evidence. The Landlord's agent testified that the Landlord began advertising the rental unit on December 1, 2011, for \$1,100.00 per month. She testified that the rental unit shares a balcony with another rental unit and that therefore it is a little harder to rent, but that the price reflects this. She stated that other similar units with private balconies rent for \$1,200.00 in the same building.

The Landlord's agent seeks unpaid rent for the month of December, 2011, and loss of revenue for the months of January and February, 2012, for a total of **\$3,300.00**.

The Landlord's agent testified that the rental unit was fairly clean at the end of the tenancy, so it only took 2 hours to clean it. The Landlord seeks **\$50.00** for cleaning charges (2 hours @ \$25.00 per hour).

The Landlord seeks liquidated damages in the amount of **\$550.00**.

Analysis

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish its claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenants pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the undisputed, affirmed testimony of the Landlord's agent, I am satisfied that the Tenants did not end the tenancy in accordance with the provisions of Section 45 of the Act and that the Landlord has suffered a loss because of the Tenants' breach of the Act.

Where a rental unit is available for rent for several months the issue of mitigation is paramount, as provided in paragraph 4 of the test above. The Landlord did not provide

any documentary evidence to demonstrate when advertising commenced, the frequency of advertisements, the content of the advertisements, or where the advertisements were placed. Where a landlord is claiming several months of loss of rent I find it reasonable to expect that the landlord would provide copies of at least some of the advertisements, receipts for any advertising costs incurred, or a schedule as to timing and placement of various advertisements. Neither did the Landlord provide any documentary or oral evidence with respect to how many times the rental unit was shown to prospective tenants.

Considering that the Landlord's claim is for three months of loss of revenue and the lack of documentary evidence, I am not satisfied that the Landlord has demonstrated that sufficient efforts were made to minimize rental losses. I find that the Landlord is entitled to unpaid rent for December, 2011, but do not award the Landlord any loss of revenue for January, 2012, and onwards and this portion of the Landlord's claim is dismissed without leave. I find that the Landlord has established a claim in the amount of **\$1,100.00** for this part of its application.

Residential Tenancy Policy Guideline 4 provides for liquidated damages. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the fixed term by the tenant. If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum unless the sum is found to be a penalty. The tenancy agreement provided in evidence includes a clause for liquidated damages and I find the amount payable under the clause to be a reasonable pre-estimate and it is not a penalty. Therefore, I grant the Landlord's request to recover liquidated damages of **\$550.00** from the Tenants.

I accept the Landlord's agent's affirmed testimony that there was a minimal amount of cleaning that was required to be done at the end of the tenancy. I find that the Landlord is entitled to a monetary award of **\$50.00** for this portion of its claim.

The Landlord's application had merit and I find that it is entitled to recover the cost of the **\$50.00** filing fee.

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the security deposit towards partial satisfaction of its monetary claim.

I hereby provide the Landlord a Monetary Order, calculated as follows:

Loss of revenue	\$1,100.00
Liquidated damages	\$550.00
Cleaning charges	\$50.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,750.00
Less security deposit	<u>-\$550.00</u>
BALANCE DUE TO LANDLORD AFTER SET OFF	\$1,200.00

Conclusion

I hereby provide the Landlord a Monetary Order in the amount of \$1,200.00 against the Tenants. This Order must be served on the Tenants and 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: June 18, 2012.

Residential Tenancy Branch