



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNR, MND, MNDC and FF
Tenant: MNSD and FF

Introduction

This hearing was convened on applications by both the landlords and the tenants.

By application of June 1, 2012, the landlords sought a monetary award for unpaid rent, damage to the rental unit, damage or loss under the legislation or rental agreement and recovery of the filing fee for this proceeding.

By application of July 16, 2012, the tenants sought return of their security deposit in double and recovery of the filing fee for this proceeding.

Issue(s) to be Decided

The tenants' application requires a decision on whether they are entitled to return of the security deposit and whether the amount should be doubled.

The landlords' application requires a decision on whether they are entitled to a monetary award for rent, damage to the rental unit and damage or loss.

Claims in damages require that several factors be taken into account: the comparison of move-in vs. move-out condition inspection reports, whether damages are proven and attributable to the tenants, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable. Damage or loss due to non-compliance with the legislation or rental agreement requires the claimant to take reasonable steps to minimize the loss claimed. The burden of proof falls to the applicant.

Background, Evidence and Analysis

This tenancy began on August 1, 2010 under a fixed term rental agreement set to end on August 31, 2011. Rent was \$3,300 per month and the landlord holds a security deposit of \$1,650 paid on July 27, 2012, a period in which no interest has been payable under the *Regulations*.

During the hearing, the parties concurred that the tenancy had ended early, on July 31, 2012, pursuant to a Notice to End Tenancy for unpaid rent.

Tenants' Claim

As to the tenants application for return of the security deposit in double, one of the attending tenants, CS, confirmed that he had authorized the landlord to retain the security deposit in set off against a rent shortfall of \$1,450 for July 2011, which created a surplus of \$200 for the tenants in balancing accounts.

As authorized under section 72(2)(b) of the *Act*, I hereby confirm that the landlords retain the \$1,650 in set off against the July 2011 rent shortfall and find that the tenants have a \$200 remainder. I further find that the permission was sufficiently ambiguous that the remainder \$200 is not eligible for return in double but remains to be credited to the tenants with respect to August rent.

Landlords' Claims

The landlords claim and I find as follows:

Unpaid rent for July 2011 - \$3,300. As noted, the claim for July 2011 rent was satisfied by a partial payment of \$1,850 plus the tenants' confirmed authorization that the landlords retain the \$1,650 security deposit. Therefore, no further award is necessary on this claim and, in fact, the tenants have a residual credit of \$200 from the month.

Unpaid rent/loss of rent for August 2011 - \$3,300. The landlord makes claim that because the tenants left the fixed term tenancy one month early, they are responsible for the rent for August 2011. The tenants hold that the tenancy ended because the landlord issued the Notice to End Tenancy for unpaid rent and they had no option to utilize the rental unit in August.

I do not find that argument persuasive as a breach of the rental agreement and of section 26 of the *Act* by failure to pay rent cannot constitute lawful reason to escape the tenants' obligations to honour a fixed term rental agreement. Tenants' notice to end a fixed term tenancy cannot be given for any date earlier than the end date set by the agreement under section 45(2)(b) of the *Act*.

However, section 7 of the *Act*, which qualifies a party to a rental agreement who suffers a loss due to the non compliance of the other to claim for the loss, also requires the claimant to do whatever is reasonable to minimize the loss.

In the present matter, the landlords have submitted no evidence of advertising efforts to find new tenants. By way of explanation, they claim damage to the rental unit did not allow sufficient time to find a new tenant for August 2011 and they were unable to begin a new tenancy until October 2011.

The tenants argue that the rental unit was in similar condition at the end of the tenancy as it was at the beginning and both argue the absence of a move-out condition inspection report was the fault of the other.

The tenants stated that, there were sub-tenants living in the rental unit at the end of their tenancy who were completely willing and able to take over the tenancy. The landlords stated that they would have been prepared to create such a tenancy if the July rent had not been outstanding.

I find sufficient merit in both arguments that I find the unpaid rent/loss of rent for August 2011 should be share equally between the parties. Therefore, I find that the tenants owe to the landlords \$1,650 for half of the August rent, reduced by \$200 by the residue of the security deposit, and award \$1,450 on the claim.

Damage to the rental unit - \$1,810. The landlords have submitted numerous photographs and an itemized list from the property manager in support of this claim, however, the scheduled one hour hearing had elapsed before the claims could be canvassed. Rule 2.3 under the Rules of Procedure provides that a Dispute Resolution Officer may dismiss unrelated disputes with or without leave to reapply if it is found appropriate to do so.

In the present matter, I find the rent, loss of rent and security deposit issues in these cross applications to be paramount and that it was appropriate to address them

separately from the issue of damages. Accordingly, the landlords' claims in damages are dismissed with leave to reapply.

Filing fee - \$50. As the landlords' application has substantially succeeded, I find that they are entitled to recover the filing fee for this proceeding from the tenants.

Thus I find that the tenants owe to the landlords an amount calculated as follows:

Rent for one-half of August 2011	\$1,650.00
Sub total	\$1,700.00
Less residue from security deposit	- 200.00
TOTAL	\$1,500.00

Conclusion

The tenant's claim for return of the security deposit is dismissed without leave to reapply.

The landlords' claim for damage to the rental unit is dismissed with leave to reapply.

In addition to the retained security deposit, the landlords' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for \$1,500.00 for service on the tenants.

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: July 27, 2012.

Residential Tenancy Branch