



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, MNR, MND, FF

Introduction

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

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and no party raised any issue regarding service of the evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to documentary evidence timely submitted prior to the hearing, and make submissions to me.

I have reviewed all 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.

Issue(s) to be Decided

Is the landlord entitled to a monetary order, for authority to retain the tenants' security deposit and to recover the filing fee?

Background and Evidence

This tenancy originally began on August 1, 2010, for a 1 year fixed term, ending on July 31, 2011. The parties then entered into a new 1 year, fixed term tenancy agreement, beginning August 1, 2011, set to end on July 31, 2012; monthly rent for both tenancy agreements was \$1695.00; the tenants paid a security deposit of \$847.50 at the beginning of the tenancy on or about August 1, 2010.

When questioned, the landlord said that the security deposit was transferred from the first tenancy to the second tenancy. The landlord has not returned the tenants' security deposit due to their application claiming against it.

The landlord's monetary claim:

liquidated damages	\$450.00
unpaid rent for June 2012	\$1695.00
unpaid rent for July	\$896.00
cleaning costs	\$105.00
refrigerator repair	\$265.15
Total	\$3461.15

The landlord's relevant evidence included the tenancy agreements, photographs of the rental unit, a condition inspection report, notices to the tenants, receipts for the damages claimed and copies of advertisements for the rental unit.

Liquidated damages-In support of their application, the landlord said that the tenants breached the tenancy agreement by ending the tenancy early before the end of the fixed term. The evidence shows that the tenants issued a notice on April 13, 2012 that they would be vacating the rental unit by May 15, 2012.

The landlord said they are entitled to liquidated damages as the tenants agreed to this term in their tenancy agreement, should the tenants end the fixed term early or breach the Act or agreement. The landlord explained that this term was made clear to the tenants before the tenancy agreement was signed.

The tenants said that they agreed to pay the landlord the liquidated damages.

Unpaid rent-The landlord stated that they are entitled to unpaid rent for June and half of July as the tenants ended the tenancy early, in May, and the earliest the rental unit could be re-rented was July 16, 2012.

The landlord submitted that steps were undertaken to re-rent the rental unit by advertising the same on the internet via their own website and on popular free online advertising sites, beginning April 13, 2012. The landlord confirmed that the monthly rent

was not reduced until June 7, 2012 and that the rental unit was rented effective July 16, 2012.

In response the tenants disagreed that they were responsible for the rent for June and July 1-15 as they had agreed to pay the liquidated damages, which they contended were in lieu of rent. Otherwise, they would not have signed that portion of the tenancy agreement.

The tenants disagreed that the landlord advertised the rental unit as aggressively as needed, as the female tenant said she checked the listing and noticed that it was often at the bottom of the list.

Cleaning costs-After testimony regarding this claim, the landlord agreed to withdraw this request.

Refrigerator repair-The landlord said that it was necessary to replace a shelf in the refrigerator as the tenants admitted to breaking it. The landlord showed a picture of the space where the shelf was to be and supplied an invoice for the repair.

The tenants disputed the necessity of purchasing a new shelf, as listed in the invoice, as the only broken items were the brackets holding the shelf.

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, the landlord in this case, has to prove four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **third**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **last**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

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

Liquidated damages and unpaid rent (as called by the landlord)

I find the landlord has incorrectly referred to the issue of rent for June and July 1-15 as unpaid rent; I find rather the landlord's claim actually refers to *loss of revenue* for those months. Unpaid rent would include any rent during the tenancy the tenants did not pay rent and I have no evidence that the tenants did not pay rent for any month during the tenancy before they vacated the rental unit in May.

With reference to landlord's claim for loss of revenue for June and July 1-15 and the liquidated damages, the landlord's liquidated damages clause states:

If the tenant ends the fixed term tenancy, or is in breach of the Residential Tenancy Act (the "Act") or a material term of this Agreement that causes the landlord to end the tenancy before the end of the term as set out in (B) above, or any subsequent fixed term, the tenant will pay to the landlord the sum of \$450.00 as liquidated damages and not as a penalty. Liquidated damages are an agreed pre-estimate of the landlord's costs of re-renting the rental unit and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent or for damage to the rental unit or residential property.

The landlord invoked the liquidated damages clause by demanding the tenants pay the amount of \$450.00, which by the wording of the clause meant that the landlord treated the tenancy at an end (*if the tenant ends the fixed term tenancy before the end of the original term, or is in breach of the Residential Tenancy Act or a material term of this agreement **that causes the landlord to end the tenancy...*** ((my emphasis added))).

In the event that the landlord chooses to treat the tenancy as being at an end, the tenant must pay \$450.00 as liquidated damages, in addition to amounts **owed** for unpaid rent or damage.

The clause is silent as to any obligation of the tenants to pay loss of income, or loss of revenue or expenses for any period **after** the end of the tenancy. Having elected to end the tenancy, there is no longer a remedy available in law or in equity to the landlord for the payment of future loss of rental income. I therefore dismiss without leave to reapply the landlord's claim for loss of revenue for the time period of June 1 through July 15, 2012. I allow the landlord's claim for the liquidated damages in the amount of \$450.00.

Cleaning costs- The landlord withdrew this claim of \$105.00. It is therefore dismissed without leave to reapply.

Refrigerator repair-I find the landlord submitted sufficient evidence that the tenants damaged the refrigerator to the extent that a repair and replacement was required. I therefore allow the landlord's claim for \$265.15.

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

Conclusion

I find the landlord has established a monetary claim in the amount of \$765.15, comprised of liquidated damages of \$450.00, refrigerator repair of \$265.15 and for recovery of the filing fee of \$50.00.

I direct that the landlord retain the amount of \$765.15 from the tenants' security deposit of \$847.50 in satisfaction of their monetary claim. I also grant the tenants a final, legally binding monetary order in the amount of \$82.35, which is the balance remaining from their security deposit after the landlord has deducted \$765.15.

I have enclosed the monetary order with the tenants' Decision. Should the landlord fail to pay the tenants this amount without delay, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement.

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: August 07, 2012.

Residential Tenancy Branch