



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was scheduled in response to the landlord's application for a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee.

Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the fixed term of tenancy is from September 1, 2011, to August 31, 2012. The tenant named in this application is 1 of what were 4 tenants in the unit. Pursuant to the tenancy agreement, monthly rent of \$1,600.00 is due and payable in advance on the first day of each month, and a security deposit of \$800.00 was collected. A move-in condition inspection report was completed with the participation of both parties, although the tenant who participated is not the same tenant named in this application. The landlord testified that a copy of the move-in condition inspection report was provided to the tenants, whereas the tenant in attendance to the hearing disputes this.

By letter dated March 30, 2012, the tenants gave notice to end tenancy effective April 30, 2012. Subsequently, all tenants had all vacated the unit by April 26, 2012.

The tenant claims that the written notice above was handed to the landlord sometime around the end of March or early April when rent was paid for April. The landlord denies being given the written notice in this way; rather, the landlord testified that he found the letter on a counter in the unit when he attended to collect rent for May, at

which time he found that the tenants had clearly already vacated the unit. There is no move-out condition inspection report in evidence.

The tenant testified that she provided the landlord with a forwarding address on June 22, 2012. The landlord's application for dispute resolution was filed on June 25, 2012.

The landlord testified that advertising for new renters began in early May and that new renters were found for the unit effective August 1, 2012. Advertising was undertaken in ways which included Castanet and Kijiji.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and testimony of the parties, the various aspects of the landlord's claim and my findings around each are set out below.

\$4,800.00*: *loss of rental income for May, June & July 2012 (3 x \$1,600.00)*. There is conflicting testimony in regard to the nature of conversations, understandings and agreements between the parties around the tenants' liability for rent between the time when they vacated the unit, and the end date of the fixed term of tenancy. However, there is no evidence of any written agreements between the parties in this regard.

Section 45 of the Act addresses **Tenant's notice**, and provides in part as follows:

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 7 of the Act addresses the **Liability for not complying with this Act or a tenancy agreement**, as follows:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) 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.

I find that the tenants' manner of giving notice to end the tenancy does not comply with the statutory provisions pertinent to ending a fixed term tenancy. I also find on a balance of probabilities that the landlord undertook in a timely fashion to advertise for new renters. In the result, I find that the landlord has established entitlement to the full amount claimed.

\$784.00: *unit repairs*. During the hearing the landlord withdrew this aspect of the application.

\$240.00: *unit cleaning*. In the absence of the comparative results of move-in and move-out condition inspection reports, I find that there is insufficient evidence to support this aspect of the application. Accordingly, this aspect of the application is hereby dismissed, and the attention of the parties is drawn to the following sections of the Act:

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

\$356.72*: *carpet cleaning*. Section 37 of the Act speaks to **Leaving the rental unit at the end of a tenancy**, and provides in part as follows:

37(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and...

Further, Residential Tenancy Policy Guideline # 1 speaks to "Landlord & Tenant – Responsibility for Residential Premises," and under the heading CARPETS, provides in part as follows:

CARPETS

- 3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

While the tenant testified that the carpets were vacuumed before the unit was vacated, the carpets were not steam cleaned or shampooed. Following from all of the above, I therefore find that the landlord has established entitlement to the full amount claimed.

\$100.00*: filing fee. As the landlord has mainly succeeded with this application, I find that the landlord has established entitlement to recovery of the full filing fee.

Sub-total of entitlement: \$5,256.72

I order that the landlord retain the security deposit of \$800.00, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$4,456.72 (\$5,256.72 - \$800.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$4,456.72**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court 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: September 04, 2012.

Residential Tenancy Branch