



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 previously convened on August 16, 2012. However, as the tenant was unable to personally attend, the parties agreed to an adjournment.

The hearing concerns the landlords' 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 landlords are entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the year-long fixed term of tenancy was from January 1 to December 31, 2012. Monthly rent of \$1,750.00 was due and payable in advance on the first day of each month, and a security deposit of \$875.00 was collected. A move-in condition inspection report was completed with the participation of both parties.

At some stage around the middle of May 2012, by way of undated letter the tenant gave notice of intent to end the tenancy. Subsequently, the tenant vacated the unit effective May 31, 2012. There appears to be no dispute between the parties that rent paid for May was \$20.00 short of the full amount due.

Despite efforts made between the parties to schedule a mutually agreeable time to complete a move-out condition inspection & report, a gathering of both parties for this purpose never occurred. Further, while the landlords did not complete a move-out condition inspection report in the absence of the tenant, they submitted into evidence a

move-in condition inspection report completed in early June 2012 near the start of tenancy for the new renters.

New renters were found effective June 1, 2012, however, possession was delayed to June 3, 2012, as a result of cleaning required in the unit. Monthly rent for the new renters was reduced by \$100.00 to \$1,650.00. The landlords also claim that rent of \$1,650.00 for June was reduced by \$110.00 as cleaning required in the unit delayed possession by 2 days.

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 which includes photographs and certain receipts, and the affirmed testimony of the parties, the various aspects of the landlords' claim and my findings around each are set out below.

\$20.00*: *unpaid rent for May 2012*. I find that as the parties do not dispute this aspect of the claim, the landlords have established entitlement to the full amount claimed.

\$375.00: *(\$25.00/hour x 15 hours) labour for cleaning and removal of discarded possessions*. 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...

After reflecting on the documentary evidence as well as the considerable testimony from the parties on this particular aspect of the application, and bearing in mind that no move-out condition inspection report was completed, I find on a balance of probabilities that the landlords have established entitlement limited to **\$187.50***, which is half the amount claimed.

\$30.00: *cleaning supplies*. Having found that certain cleaning was required in the unit following the end of tenancy, as above, I find that the landlords have established entitlement limited to **\$15.00***, or half the amount claimed.

\$110.00*: *loss of rental income for June 1 & 2, 2012*. The landlords testified that as a result of cleaning required in the unit after the end of tenancy, the new renters were given the unit keys and effectively took possession of the unit on June 3, 2012. I find that rent for 1 day in the 30 day month of June is \$55.00, calculated as follows:

$$\begin{aligned} \$1,650.00 \text{ (monthly rent)} \div 30 \text{ (\# days in June)} &= \$55.00 \text{ (daily rent)} \\ \$55.00 \text{ (daily rent)} \times 2 \text{ (\# days delay in occupancy)} &= \$110.00 \text{ (reduction in rent)} \end{aligned}$$

As I have already found that certain cleaning was required in the unit, as above, I find that the landlords have established entitlement to the full amount claimed in this aspect of the application.

\$700.00*: *rent differential for the 7 month period from June to December 2012 (\$1,750.00 v. \$1,650.00)*. Section 45 of the Act speaks to **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.

I find that the tenant's manner of ending the fixed term tenancy did not comply with the above statutory provisions.

Residential Tenancy Policy Guideline # 3 addresses "Claims for Rent and Damages for Loss of Rent," and provides in part:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have

received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.

Following from the above, I find that the landlords have established entitlement to the full amount claimed.

\$500.00: repairs to scratched laminate flooring. The landlords testified that the flooring was 1 year old at the time when the subject tenancy began. The landlords also testified that no repairs of the floor were undertaken following the end of tenancy, and that the cost for repairs is a conservative estimate. Notwithstanding that the landlords submitted a move-in condition inspection report with respect to the unit near the time when the new tenancy began, in the absence of the comparative results of a move-in and move-out condition inspection report concerning the subject tenancy, and in the absence of any actual expense incurred by the landlords, this aspect of the application is hereby dismissed. The attention of the parties is also 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

As well, the parties are referred to Part 3 (sections 14 to 21) of the Regulation which speaks to **Condition Inspections**.

\$500.00: repairs & painting of nail holes in walls. The landlords testified that no repairs & painting were undertaken following the end of tenancy, and that the cost for repairs is an estimate. For reasons identical to those set out immediately above, this aspect of the application is hereby dismissed. Again, the attention of the parties is drawn to section 37, as above, which speaks to **Leaving the rental unit at the end of a tenancy**. Further, the parties are referred to Residential Tenancy Policy Guideline # 1 which addresses "Landlord & Tenant – Responsibility for Residential Premises," with particular attention to the sub-heading - "Nail Holes" under the heading, WALLS.

\$9.92: cost of registered mail. Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the application is hereby dismissed.

\$17.02: cost of developing photos. For reasons identical to those set out immediately above, this aspect of the application is hereby dismissed.

\$50.00*: *filing fee*. As the landlords have achieved a measure of success with their application, I find that they have established entitlement to recovery of the full filing fee.

Section 72 of the Act addresses **Director's orders: fees and monetary orders**, and provides in part as follows:

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Following from all of the above, I find that the landlords have established entitlement to a claim of **\$1,082.50**. I order that the landlords retain the security deposit of **\$875.00**, and I grant the landlords a monetary order under section 67 of the Act for the balance owed of **\$207.50** (\$1,082.50 - \$875.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords in the amount of **\$207.50**. 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 26, 2012.

Residential Tenancy Branch