



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

In response to the landlord's direct request application for an order of possession and a monetary order as compensation for unpaid rent, an *ex parte* proceeding took place on August 23, 2012, with a decision issued by date of August 24, 2012. Pursuant to that decision an order of possession was issued in favour of the landlord. After receiving the landlord's notice of direct request proceeding, the tenants made a submission to the Branch in which they claimed that rent was now paid in full. Accordingly, this participatory conference call hearing was scheduled to address the aspect of the landlord's direct request application for a monetary order as compensation for unpaid rent.

In the interim, on September 13, 2012, the landlord submitted additional documentation to the Branch which included an amended application. Further to the request for an order of possession and a monetary order as compensation for unpaid rent, the amended application includes a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement, retention of all or a part of the security deposit, and recovery of filing fee(s).

Additionally, the landlord cancelled a conference call hearing which had been scheduled to commence at 9:00 a.m. on September 14, 2012 in response to his application for an order of possession, a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement, retention of the security deposit, and recovery of the filing fee.

Preliminary Matter

A written submission with a request for adjournment was made in advance of the hearing on behalf of tenant "CGB" by "VL," acting as his agent. The agent also made an oral submission in this regard before the commencement of the hearing. In summary, the agent argued that as the tenant would be out of country from September 8 to 27, 2012, he would have insufficient time to prepare a response to the landlord's amended application. In view of the presence of tenant "RM" at this hearing, in light of

the abundance of documentary evidence, and in consideration of the narrow issues before me, the request for adjournment was denied. The hearing therefore proceeded with both parties present and / or represented and providing affirmed testimony.

As previously noted, an order of possession has already been issued in favour of the landlord, and the tenants vacated the unit on August 31, 2012. In the result, I consider the landlord's application for an order of possession to be withdrawn.

Further, as the parties agreed during this hearing that rent for August 2012 has now been paid in full, I consider the landlord's application for a monetary order as compensation for unpaid rent to also now be withdrawn.

Issue(s) to be Decided

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

Background and Evidence

Pursuant to a written tenancy agreement, what eventually became a month-to-month tenancy began on June 1, 2009. Monthly rent of \$1,425.00 was due and payable in advance on the first day of each month, and a security deposit of \$712.50 was collected on May 9, 2009. A move-in condition inspection report was completed with the participation of both parties.

One of the notices issued to the tenants was a 1 month notice to end tenancy for cause dated July 25, 2012. The date shown on the notice by when the tenants must vacate the unit is August 31, 2012. The tenants did not file an application to dispute the notice and, as early noted, the tenants vacated the unit on August 31, 2012. A move-out condition inspection report was completed with the participation of both parties on August 31, 2012. Pursuant to agreement reached between the parties and documented on the move-out condition inspection report, the tenants authorized the landlord to withhold \$200.00 from their security deposit.

To date, no new renters have been found for the unit. During the hearing the landlord testified that uncertainty around whether or not the tenants were actually going to vacate the unit at the end of August, hampered them in proceeding to advertise and show the unit to prospective new renters. The landlord also claimed that the tenants did not respond in a helpful manner to the landlord's notice of intent to show the unit to prospective new renters, and further noted that the order of possession was received by

mail late in the month of August. In summary, the landlord takes the position that these circumstances have established entitlement to the landlord's claim for the loss of rental income for September and October 2012.

For their part, the tenants point out that as they did not file an application to dispute the 1 month notice, the landlord could reasonably conclude that the tenants accepted that the tenancy would end on the effective date of the notice which was August 31, 2012. Further, the tenants argue that the landlord has not claimed that any delay in finding new renters is the result of cleaning or repairs that were required in the unit following the end of their tenancy. As to their response to notice(s) from the landlord related to showings of the unit, the tenants claim they only wished to be given proper notice in compliance with the Act, pursuant to which they themselves could be prepared for showings and have the unit made suitable for showings.

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 application and my findings around each are set out below.

\$1,425.00: *loss of rental income for September.* In the absence of any evidence that the tenants denied the landlord entry to the unit following issuance of proper written notice, and in the absence of any documentary evidence or claim that cleaning and / or repairs in the unit following the end of this tenancy delayed or otherwise hindered the landlord in efforts to find new renters, this aspect of the application is hereby dismissed.

\$1,425.00: *loss of rental income for October.* Further to the fact that this aspect of the application is premature, for reasons identical to those set out immediately above, this aspect of the application is hereby dismissed.

\$200.00*: *withhold from the security deposit.* Pursuant to the agreement reached between the parties, I find that the landlord has established entitlement to the withholding of the full amount claimed from the tenants' security deposit.

\$50.00: *filing fee for application / file #796622.* This fee was paid by the landlord for a hearing which was later cancelled by the landlord. In the result, I find that there are no grounds for establishing entitlement to recovery of this filing fee and the application is hereby dismissed.

\$50.00*: *filing fee pursuant to direct request application / file #796531*. The filing fee is generally unable to be recovered pursuant to a direct request proceeding. However, in the circumstances of this dispute, at the discretion of the dispute resolution officer the *ex parte* direct request proceeding gave rise to the scheduling of a participatory conference call hearing. Accordingly, I find that the landlord has established entitlement to recovery of this particular filing fee.

Following from all of the above, I find that the landlord has established entitlement to compensation in the limited amount of **\$250.00** (\$200.00 + \$50.00). I order that the landlord retain this amount from the security deposit of **\$712.50**, and I order the landlord to FORTHWITH repay the balance of the security deposit to the tenants in the amount of **\$462.50** (\$712.50 - \$250.00).

During the hearing the landlord agreed to forward separate and equal payments to each tenant of any portion of the security deposit ordered to be repaid. In the result, the cheque payment to each tenant in this case will be **\$231.25** (\$462.50 ÷ 2).

No interest has accrued on the security deposit between the time of its collection on May 9, 2009 and the date of this decision.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$462.50**. Should it be necessary, this order may be served on the landlord, 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 27, 2012.

Residential Tenancy Branch