



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenants' application: MNSD; FF

Landlords' application: MNR; MNDC; MNSD; FF

Introduction

This Hearing was convened to consider cross applications. The Tenants seek return of the security and pet damage deposits; and to recover the cost of the filing fee from the Landlords.

The Landlords seek a Monetary Order for unpaid rent and loss of revenue; to apply the security and pet damage deposits towards partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

The Tenants served the Landlords with their Notice of Hearing documents and documentary evidence, by handing the documents to the Landlords' agent at the Landlords' place of business on August 15, 2012. The Landlords' Notice of Hearing documents and documentary evidence were sent to the Tenants via registered mail on September 11, 2012.

Preliminary Matter

The Landlords' Application is clear that they are seeking loss of revenue for the month of September, 2012. Therefore, I have amended their Application to include this request for damage or loss under the Act, regulation or tenancy agreement.

Issues to be Decided

1. Are the Landlords entitled to a Monetary Order for unpaid rent for the month of August, 2012, and loss of revenue for the month of September, 2012?
2. Should the Landlords be ordered to return the security and pet damage deposits to the Tenants or may they apply the deposits towards their monetary award?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This was a term lease from January 1, 2012 to December 31, 2012. Monthly rent was \$1,000.00, due on the first day of each month.

The Tenants testified that they paid a security deposit of \$500.00 and a pet damage deposit of \$500.00, for a total of \$1,000.00. The Landlord's agent testified that the Tenants only paid \$400.00 for the pet damage deposit. The Landlord's agent stated that she had the record of payments made during the tenancy to support her claim. The Tenants stated that their records were stolen along with other personal items during a break-in, so they could not substantiate their claim that they paid \$500.00 for a pet damage deposit. The Landlord did not provide a copy of the Tenants' ledger in evidence.

The Tenants testified that they moved out of the rental unit on August 1, 2012, because they did not feel safe in their own home and the Landlord did not take appropriate steps to rectify the problem. The Tenants testified that they called the police in March, 2012 because of gun shots near the rental property but that they were advised that it was legal for hunters to shoot guns as long as they were more than 100 meters from the rental property. The Tenants stated that after they called the police, their house was burgled; their cat was killed and left by their garbage can; cows were let out to roam in their yard; and they generally felt unwelcome by their neighbours.

In addition, the Tenants stated that the owners of the property attended at the rental property twice a week to maintain the lawn and gardens. The Tenants stated that yard maintenance was their responsibility pursuant to the terms of the tenancy agreement and that they did not welcome the owners' constant interference. The Tenants testified that the owners looked in their windows, once when the female Tenant was breastfeeding. They stated that the owners would bring other strangers to the rental property, without notice or the Tenants' permission. The Tenants stated that the owners used their electricity for mowing the lawn and garden work, and that they would stay on the rental property for hours, effecting their use and enjoyment of their own home.

The Tenants testified that the Landlords were advised of all of these issues, by phone and in e-mails, but did nothing to stop the owners from harassing them.

The Landlord's agent stated that she told the Tenants that they could end the tenancy early without penalty if the Landlord could re-rent the rental unit and if the Tenants provided their notice to end the tenancy in writing. The Landlord's agent testified that the Tenants did not provide written notice before they moved out.

The Landlord's agent testified that the Landlords advertised the rental unit as soon as the Tenants advised that they were unhappy and wanted to end the tenancy, but withdrew the ad when the Tenants complained about it. She stated that she also told the Tenants that they would have to give written notice to end the tenancy. When the Tenants did not pay rent for August, the Landlord issued a Notice to End Tenancy for unpaid rent. Six days after she posted the Notice to the Tenants' door, the Landlord re-listed the rental unit. A copy of the ad was provided in evidence.

The Landlord's agent stated that she spoke to the owners about mowing the Tenants' lawn, the owners said they thought they were doing the Tenants a favour. She stated that she heard nothing further from the Tenants until she called them to advise that the owners would be going to the rental property to check the property line. The Landlord's agent stated that the owners were not there as often as every second day.

Analysis

I heard conflicting testimony with respect to the amount that the Tenants paid for a pet damage deposit. I find that the Tenants paid \$500.00. I make this finding because the Landlord had the ability to provide documentary evidence of the deposit paid and did not do so.

Section 44 of the Act provides the only ways a tenancy can end, which includes a tenant's notice to end the tenancy pursuant to the provisions of Section 45 of the Act. Section 45 of the Act provides:

Tenant's notice

45 (1) A tenant may end a periodic 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, and

(b) 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.

(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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives **written notice** of the failure, the tenant may end the tenancy **effective on a date that is after the date the landlord receives the notice**.

(4) A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].

(emphasis added)

Section 52 of the Act provides:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy **must be in writing and must**

- (a) **be signed and dated** by the landlord or tenant giving the notice,
- (b) **give the address of the rental unit,**
- (c) **state the effective date of the notice,**
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, **state the grounds for ending the tenancy,** and
- (e) when given by a landlord, be in the approved form.

(emphasis added)

I find that the Tenants did not comply with Sections 45(3) or Section 52 of the Act. They did not provide the Landlords with written notice that complies with Sections 45(4) and 52 of the Act. Therefore, I find that the Landlords are entitled to a monetary order for unpaid rent for the month of August, 2012, in the amount of **\$1,000.00**.

With respect to the Landlords' request for loss of revenue for the month of September, 2012, Section 7 of the Act requires a party who claims compensation for loss must do whatever is reasonable to minimize the loss. The Landlords provided a copy of the ad that was placed to re-rent the rental unit. The ad indicates that monthly rent is \$1,150.00, which is more than the Tenants were paying. Therefore, I find that the

Landlords did not comply with Section 7 of the Act and I dismiss the Landlords' application for loss of revenue for the month of September, 2012.

Pursuant to the provisions of Section 72 of the Act, the Landlords may deduct the security and pet damage deposits from their monetary award, leaving a balance due to the Landlords of NIL.

The Landlords have been partially successful in their application and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Tenants.

The security and pet damage deposits have been extinguished and therefore the Tenants' application is dismissed.

Conclusion

The Tenants' application is **dismissed without leave to reapply**.

The Landlords' application for loss of revenue for September, 2012, is **dismissed without leave to reapply**.

The Landlords' application for unpaid rent for August, 2012, is granted. The Landlords may apply the security and pet damage deposits in full satisfaction of their monetary award.

I hereby provide the Landlords a Monetary Order in the amount of **\$50.00**, representing recovery of the cost of filing their application. This Order must be served on the Tenants and may be filed in the Provincial Court of British Columbia (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: October 09, 2012.

Residential Tenancy Branch