



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MND, MNDC, 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.

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

The tenants confirmed receiving the landlord's evidence; however the tenants failed to provide the landlord with a copy of their electronic evidence as required by the Residential Tenancy Branch Rules of Procedure (Rules) and I have therefore not considered the tenants' electronic evidence contained on a compact disc.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

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

Background and Evidence

This tenancy began on February 15, 2012, monthly rent was \$1580.00 and a security deposit of \$1000.00 was paid by the tenants at the beginning of the tenancy.

The landlord said the tenancy was for a one year, fixed term; however the tenancy agreement provided by the tenants showed it ending on the last day of February 2012.

The landlord provided a tenancy agreement, with the end of tenancy date having been altered by a handwritten correction of the year.

The tenants explained that each of the parties had an original tenancy agreement and that their original tenancy agreement had the end of tenancy year listed as 2012.

As to the end of the tenancy, the landlord said the tenants moved out on June 30 and the tenants said they moved out on June 28, 2012.

The rental unit is one side of a duplex.

The landlord's monetary claim is \$3639.18, comprised of loss of rent of \$1580.00 for July and August 2012, cleaning and repairing for \$392.00, and advertisement expenses for \$87.18.

The landlord said that he received notice from the tenants on June 27, 2012, that they were vacating the rental unit on June 30, 2012. The landlord said he informed the tenants that this was short notice and they would still be liable for rent through the end of the fixed term.

The landlord said he began advertising the rental unit immediately at the end of the tenancy, and secured new tenants for September 2012. The landlord supplied proof of the advertisements.

The landlord claimed that he is entitled to loss of rent for July and August due to the tenants' insufficient notice of ending the tenancy.

As to the damage alleged to have been committed by the tenants, the landlord said there was wall damage, requiring some painting, as well as cleaning. The landlord supplied the condition inspection report and a receipt. I note that the tenants did not attend the move-out inspection.

In response, the tenants said that they were compelled to give a short notice due to the ongoing behaviour of a tenant in the other side of the duplex. The tenant submitted that this other tenant had a child and was a prostitute, conducting her trade in the duplex.

The tenant said that the police and the ministry for children attended the rental unit frequently due to the activities of the other tenant, which in turn, according to tenant SM, created an environment deemed to be unsafe for his infant child. In explanation, the tenant said the ministry for children began investigating him as he had his child in the same house in which these activities were being conducted.

The tenants said that they had repeatedly discussed this issue with the landlord, that the house was unsafe, but he refused to evict the other tenant.

The tenants stated that his child was more important than giving sufficient notice to end the tenancy.

When questioned, the tenants admitted that they had not given the landlord written notifications of these problems.

As to the alleged wall damage the tenants said that there were some scratches caused by moving and everyday living. Despite this, the tenants said they sanded and primed the few spots for touch up and asked for the paint code, but the landlord's maintenance contractor would not give them the code.

Analysis

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, 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**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

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

It appears clear that the landlord altered the tenancy agreement changing the end of tenancy year after all parties had signed the document. I inform the landlord that I do not find any situation where it is an acceptable practice to alter a document after that party has signed the document, unaware that changes will be made to suit the purposes of the one making the alterations.

Nonetheless, I accept that the parties intended to enter into a one year fixed term tenancy and that the tenancy was to end on the last day of February 2013.

Unpaid rent for July 2012- Under section 45 the Act, a tenant may not give notice of ending a fixed term tenancy earlier than one clear month prior to the end of the fixed term.

As the tenants gave three days notice that they were vacating the rental unit, well before the end of the fixed term, in this case, three days, I find that the tenants submitted insufficient notice ending the tenancy, and are liable to the landlord for rent for the following month of July 2012. I therefore find the landlord is entitled to a monetary award of \$1580.00.

Loss of revenue for August- Upon a review of the evidence, I find the landlord advertised the rental unit at a monthly rent greater than the tenants' obligation and that the increased rent was advertised until the landlord secured new tenants for September 2012. I have no evidence before me that the increased, differing amounts of monthly rent used by the landlord in the advertisements were a reasonably economic rent.

In the case before me, I find a reasonable step in attempting to mitigate the landlord's loss of revenue for August would be to advertise the rental unit for a monthly rent at the same rate paid by the tenants.

As the landlord did not advertise the rental unit at the same rate of rent as the tenants were paying and the landlord submitted no evidence that the increased amounts were a reasonable economic rent, I find the landlord submitted insufficient evidence that he took reasonable steps to minimize his loss. I therefore dismiss his monetary claim for loss of revenue for August, without leave to reapply.

Wall damage and cleaning- The landlord said the paint was damaged and the tenants said that the scratches were the result of everyday wear and tear, and moving.

I am not convinced by the condition inspection report that the tenants damaged the walls beyond normal wear and tear. I also accept the evidence of the tenants that they had prepared the walls for the touch-up paint, but were not provided the paint code.

I therefore find the landlord submitted insufficient evidence that the tenants damaged the walls beyond normal wear and tear as allowed under the Act or left the rental unit unclean and I dismiss his monetary claim for \$392.00.

Advertising expenses- In relation to the landlord's claim for advertising fees, I find that the landlord has chosen to incur costs that cannot be assumed by the tenants. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act and not for costs incurred to conduct a landlord's business. Therefore, I find that I do not have authority to award the landlord advertising fees, as they are costs which are not named by the *Residential Tenancy Act* and I dismiss his claim for \$87.18.

I find the landlord's application had merit and I allow him recovery of the filing fee of \$50.00.

Conclusion

I find the landlord is entitled to a monetary award of \$1630.00, comprised of unpaid rent of \$1580.00 for July and the filing fee of \$50.00.

I allow the landlord to retain the tenants' security deposit of **\$1000.00** in partial satisfaction of his monetary claim and I grant the landlord a final, legally binding monetary order for the balance due in the amount of **\$630.00**, which I have enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court

As I informed the landlord in the hearing, the security deposit he collected from the tenants violated the Residential Tenancy Act and I remind him that he is authorized to collect a security deposit only in an amount up to one half of the monthly rent listed in the tenancy agreement.

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* and is being mailed to both the applicant and the respondents.

Dated: October 19, 2012.

Residential Tenancy Branch