



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord submitted documents to the Residential Tenancy Branch on December 12, 2012, copies of which were served to the Tenant. The Tenant acknowledged receipt of the documents and they were accepted as evidence for these proceedings.

The Landlord submitted a document to the Residential Tenancy Branch on December 14, 2012, copies of which was not served to the Tenant. As the document was not served to the Tenant it was not accepted as evidence for these proceedings.

The Tenant submitted documents to the Residential Tenancy Branch on December 05, 2012, copies of which were served to the Landlord. The Landlord acknowledged receipt of the documents and they were accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent/loss of revenue; to compensation for advertising costs; for compensation for cleaning the carpet; and to recover the filing fee for the cost of this Application for Dispute Resolution?

Background and Evidence

The Landlord submitted a copy of a tenancy agreement that shows the parties entered into a fixed term tenancy agreement that began on April 01, 2012 and was to continue until March 31, 2013, at which time it could be renewed for another year. The agreement declares that the Tenant is required to pay rent of \$1,500.00 by the first day

of each month and that the Tenant is required to pay a security deposit of \$750.00, which the parties agree was paid.

The Landlord and the Tenant agree that on August 14, 2012 the Tenant provided the Landlord with written notice of their intent to vacate the rental unit by September 30, 2012. The parties agree that the Tenant had verbally expressed concerns with other occupants of the residential complex, but they did not put those concerns in writing until they served their notice to end the tenancy.

The Landlord and the Tenant agree that on July 11, 2012 the Tenant reported that they were being disturbed by noise in the lower rental unit and by the smell of marijuana. The male Landlord stated that he spoke with the occupants of the lower rental unit and that he reminded them they were not permitted to smoke in the unit and advised them of their obligation to not disturb other occupants. He stated they assured him they were not smoking within the rental unit.

The Landlord and the Tenant agree that on May 13, 2012 the Tenant reported that they were being disturbed from noise in the lower rental unit and by the smell of marijuana, and that there had been a loud gathering sometime in mid-April. The male Landlord stated that he spoke with the occupants of the lower rental unit; that they again denied smoking in the rental unit; and that they informed him they had not had a gathering recently.

The Landlord and the Tenant agree that the Landlord arranged a meeting between the Tenant and the occupants of the lower rental unit for June 02, 2012; that the occupants of the lower rental indicated that they would smoke marijuana in the back yard, rather than below the Tenant's deck; that the Landlord informed the occupants of the lower rental unit that they should not smoke marijuana on the residential property; and that the Tenants and the occupants of the lower rental unit exchanged phone numbers so the Tenant could inform the lower occupant if the noise levels were inappropriate.

The Landlord and the Tenant agree that on June 02, 2012 the male Landlord suggested that they could discuss ending the tenancy on a mutually agreeable date; that the Tenant did not pursue that option at the time; and that neither party raised the possibility after June 02, 2012.

The Landlord and the Tenant agree that on July 21, 2012 the Tenant informed the Landlord of loud banging noise coming from the rental unit and the Landlord informed the Tenant they should report the noises to the police. The female Tenant stated that incident was reported to the police; that the police attended; and that the police determined that the noise was being generated by an occupant of the lower unit.

The male Landlord stated that he subsequently spoke with one of the occupants of the lower unit, who stated that he locked himself out of the rental unit on July 21, 2012 and was trying to arouse his roommate, who he believed was inside the rental unit.

The Landlord and the Tenant agree that they met on August 04, 2012 to discuss the incident on July 21, 2012, at which time the Tenant stated that they could still smell marijuana in the rental unit. The male Landlord stated that by this point he did not know what else he could do, as he had not observed any of the inappropriate behaviours reported by the Tenant.

The female Landlord stated that she spoke with one of the occupants of the lower rental unit sometime after the meeting on August 04, 2012, who reassured her that they never smoked in the rental unit and only occasionally smoked marijuana in the back yard. She told him that he was not allowed to smoke marijuana on the residential property and he agreed that he would not.

The Landlord and the Tenant agree that the Tenant vacated the rental unit on August 31, 2012 and that they provided a forwarding address, in writing, on October 08, 2012.

The Landlord is seeking compensation, in the amount of \$1,500.00, for loss of revenue from October, arising from the tenancy ending prior to the end of the fixed term of the tenancy. The Landlord stated that the rental unit was advertised on four popular websites and on the University of Victoria website. The male Landlord stated that the websites were refreshed weekly for approximately four weeks; that they were refreshed again near the end of September; and that they were refreshed again on October 09, 2012, with the exception of the University website, which was not refreshed in October.

The female tenant stated that she was checking one of the popular websites on a regular basis and she does not believe the advertisement was refreshed after September 10, 2012. She stated she did not check the other websites to see if the rental unit was being advertised in those locations.

The Tenant stated that approximately 14 people viewed the rental unit during the latter part of their tenancy, one of whom stated that the rent was too high. The male Landlord stated that the rental unit was re-rented for November 01, 2012.

The Landlord is seeking compensation for advertising, in the amount of \$30.00. The male Landlord reduced the claim to \$10.00 at the hearing and produced a document that shows this expense was incurred.

The Landlord is seeking compensation, in the amount of \$45.00, for cleaning the carpet. The male Landlord stated that the Landlord actually paid \$43.00 to clean the carpet. The female Tenant agreed that the carpet in the unit was not cleaned at the end of the tenancy and that the Landlord is entitled to recover the \$43.00 paid to clean the carpet.

Analysis

Section 45(3) stipulates that if a landlord fails to comply with a material term of a tenancy 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 on a date that is after

the landlord receives the notice. Residential Tenancy Branch Policy Guidelines suggest that to end a tenancy agreement for breach of a material term the written notice must inform the landlord that there is a problem; that they believe the problem is a breach of a material term of the tenancy agreement; that the problem must be fixed by a reasonable deadline included in the letter; and that if the problem is not fixed by the deadline the tenant will end the tenancy. I concur with this guideline.

I find that the Tenant never provided the Landlord with written notice of the problem as outlined by the Residential Tenancy Branch Policy Guidelines. Although the notice to end tenancy that was served to the Landlord specified that they were ending the tenancy because they believed the Landlord had breached a term of the tenancy agreement, they did not provide the Landlord with a reasonable amount of time to fix the alleged breach before ending the tenancy. I therefore find that the Tenant did not have the right to end this tenancy in accordance with section 45(3) of the *Act*.

Had the Landlord received a letter in which the Tenant informed the Landlord that they would be ending their tenancy if they continued to be disturbed by the occupants of the lower unit, the Landlord may have elected to issue the occupants of the lower rental unit with a Notice to End the Tenancy, which would have resolved the Tenant's concerns. I am not making a determination on whether the Landlord had grounds to end the tenancy of the lower occupants, as that matter is not before me. I do find, however, that a letter from the Tenant in which they indicate they will end their tenancy if the occupants of the lower rental unit continue to disturb them would certainly have helped the Landlord establish grounds to end the tenancy of the occupants in the lower rental unit.

I find that the Tenant did not comply with section 45(2) of the *Act* when the Tenant ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. I therefore find that the Tenant must compensate the Landlord for any losses the Landlord experienced as a result of the Tenant's non-compliance with the *Act*, pursuant to section 67 of the *Act*.

I find that the Tenant must pay \$1,500.00 to the Landlord for the loss of revenue that the Landlord experienced in October of 2012, as I am satisfied the Landlord made reasonable attempts to re-rent the rental unit for that month. I find that the Landlord would not have experienced this lost revenue if the tenancy had continued under the terms of the tenancy agreement. In determining that the Landlord made reasonable efforts to advertise the rental unit, I was heavily influenced by the undisputed evidence that the Landlord advertised on a variety of websites and that people were viewing the rental unit, which causes me to conclude that the advertising was effective.

I find that the Tenant must pay \$10.00 to the Landlord for the advertising costs incurred by the Landlord, as I am satisfied the Landlord would not have incurred this expense if the tenancy had continued under the terms of the tenancy agreement.

As the Tenant acknowledged that the carpet in the unit required cleaning at the rental unit and the Tenant agreed to compensate the Landlord for cleaning the carpet, in the amount of \$43.00, I find that the Landlord is entitled to compensation in this amount.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,603.00, which is comprised of \$1,500.00 in lost revenue, \$10.00 in advertising costs, \$43.00 for cleaning the carpet, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlord to retain the Tenant's security deposit of \$750.00 in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$853.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province 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: December 18, 2012.

Residential Tenancy Branch