



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing concerns 2 applications: i) by the landlords for a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the original security deposit / and recovery of the filing fee; and ii) by the tenants for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / double the return of the original security deposit / and recovery of the filing fee.

In response to the landlords' application, a hearing was previously scheduled for November 8, 2012. Subsequent to the landlords' application the tenants filed an application; as the hearing for the tenants' application was scheduled for January 28, 2013, an Adjournment Decision was issued by date of November 8, 2012. In the result, the landlords' application was re-scheduled to be heard as a cross application with the tenants' application at the hearing on January 28, 2013.

Both parties participated in this hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement and 2 addendums, the term of tenancy was as follows:

September 15 to 30, 2007
October 1, 2007 to September 30, 2009
October 1, 2009 to September 30, 2012.

Monthly rent of \$1,600.00 was due and payable in advance on the first day of each month. According to the tenancy agreement, a security deposit of \$800.00 was collected on August 19, 2007. While the unit was said to be in brand new condition at the start of tenancy, a move-in condition inspection report was not completed.

Arising from changes in personal circumstances, by e-mail dated April 5, 2012, the tenants gave notice to end tenancy effective June 30, 2012. Rent was paid up to the end of June 2012. On June 26, 2012 the parties undertook a walk-through of the unit, however, a move-out condition inspection report was not completed. At this same time the tenants provided a forwarding address in writing. The landlord testified that he later became concerned about whether or not he had the correct postal code for the tenants' forwarding address. There is no documentary evidence before me of any e-mail interactions between the parties in relation to clarifying or confirming the correct postal code for the tenants' forwarding address.

To date, the tenants' security deposit has not been returned.

After receiving notice from the tenants of their intent to end the tenancy, through their realtor the landlords simultaneously made the unit available for new renters and made it available for sale. Ultimately, new renters were not found and the unit sold with a closing date of October 10, 2012.

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

The various aspects of the respective applications and my findings around each are set out below.

LANDLORDS:

\$4,800.00: loss of rental income for September, October & November (3 x \$1,600.00).

Section 45 of the Act speaks to **Tenant's notice**, 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 subject tenancy was a fixed term tenancy, and not a periodic tenancy. I find, therefore, that notice given by the tenants on April 5, 2012 to end the tenancy effective June 30, 2012, did not comply with the above statutory provisions, as pursuant to the tenancy agreement the fixed term of tenancy ended on September 30, 2012.

Section 7 of the Act speaks to **Liability for not complying with this Act or a tenancy agreement**, as follows:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

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

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

As the unit was both, made available for new renters and made available for sale, I find that the landlords have established entitlement to loss of rental income in the limited amount of **\$2,400.00**, which is half the amount claimed $[(3 \times \$1,600.00) \div 2]$.

\$300.00: miscellaneous repairs.

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

Further to the sections of the Act immediately above, which bear relevance to the circumstances of this dispute, section 37 of the Act addresses **Leaving the rental unit at the end of a tenancy**, and provides in part:

37(2) When a tenant vacates a rental unit, the tenant must

(b) leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and...

In consideration of “reasonable wear and tear,” and in the absence of the comparative results of move-in and move-out condition inspection reports, this aspect of the application is hereby dismissed.

\$100.00: *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.

Sub-total entitlement: **\$2,500.00** (\$2,400.00 + \$100.00.)

TENANTS:

\$1,600.00: *double return of the original security deposit (2 x \$800.00)*

Section 38 of the Act addresses **Return of security deposit and pet damage deposit.**

In part, this section provides that within 15 days of the later of the date the tenancy ends, and the date the landlord receives the tenant’s forwarding address in writing, the landlord must either repay the security deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

The tenants provided their forwarding address on June 26, 2012. Even while the tenancy was to end on September 30, 2012 pursuant to the tenancy agreement, I find that the tenancy effectively ended on June 30, 2012. The landlords’ initial application for dispute resolution was filed on October 4, 2012.

Following from all of the above, I find that as the landlords neither repaid the security deposit, nor filed an application for dispute resolution within 15 days after the end of tenancy on June 30, 2012, the tenants have established entitlement to compensation

reflecting the double return of the security deposit. I find that the tenants have also established entitlement to interest on the original amount of the security deposit, which has accrued since the date of its collection on August 19, 2007 and the date of this decision, in the amount of **\$16.50**. A copy of the calculation made by way of the deposit interest calculator on the Branch website is attached for reference.

\$100.00: cost of "processing" the dispute.

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, the tenants' claim for miscellaneous processing costs is hereby dismissed.

\$50.00: filing fee.

As the tenants have achieved a measure of success with their application, I find that they have established entitlement to recovery of the full filing fee.

Sub-total entitlement: \$1,666.50 (\$1,600.00 + \$16.50 + \$50.00)

Offsetting the respective entitlements, I find that the landlords have established a net entitlement to **\$833.50** (\$2,500.00 - \$1,666.50).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords in the amount of **\$833.50**. Should it be necessary, this order may be served on the tenants, 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: January 28, 2013

Residential Tenancy Branch

