



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MND, MNSD, O and FF

Introduction

The hearing was convened on the landlord's application seeking a monetary award for unpaid utilities, loss of rent, damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security and pet damage deposits in set off against the balance.

Issue(s) to be Decided

Have the applicant landlord's proven the losses claimed, the attribution of those to the tenants, and the landlord's reasonable efforts to minimize their loss, and taking into account condition inspection reports, depreciation and reasonable wear and tear?

Background and Evidence and Analysis

This tenancy began on August 31, 2010 and ended on September 30, 2012. Rent was \$1,600 per month and the landlords hold security and pet damage deposits of \$750 each paid on November 1, 2010.

Documents submitted into evidence by the landlord included a 10-day Notice to End Tenancy for unpaid rent which was due on September 1, 2012 and a letter from the tenants giving notice to end the tenancy on September 30, 2012. Both documents are dated September 3, 2012. The September rent was paid and is not now at issue.

During the hearing, the landlord submitted a number of claims on which I find as follows:

Loss of Rent for October 2012 - \$1,600. This claim arises from the tenants' notice to end the tenancy, given on September 3, 2012 to take effect September 30, 2012. The tenants stated that they had telephoned the landlords on August 31, 2012 to advise that they had found new accommodation in the town they were calling from and would be leaving the tenancy on September 30, 2012. They followed up with an email and delivered written notice on September 3, 2012.

Section 45 of the *Act* prescribes that a tenant's notice to end a month to month tenancy must be given at least one month in advance of the effective date and must be served on a date before the rent due date of the month in which the tenancy is to end. Such notice must also conform to section 52 of the *Act* which requires, among other things, that it be signed. Therefore, I find that the tenants' notice was not properly given in compliance with section 45 of the *Act*.

Section 7 of the *Act*, which provides for claims for compensation for breaches of the rental agreement or the legislation, imposes a duty on the claimant to do whatever is reasonable to minimize their loss. In the present matter, the landlords have submitted no documentary evidence of their efforts to advertise the rental unit or otherwise find new tenants, although they stated they had done so. I find the landlord have not proven their reasonable action to minimize the loss of rent.

As both parties have fallen short on their obligations on the claim for October rent, I find that the loss should be shared equally between them and award \$800 on the claim.

Water and Sewer - \$413.61. The parties concurred that these utility bills have now been paid and the claim was withdrawn.

Painting and Repair - \$250. The landlords claim 10 hours labour at \$25 per hour for repainting in the rental unit. They stated that part of it had been painted in 2010 and part had been painted in 2007. Standard depreciation tables place the useful life of interior paint at four years. As I had insufficient evidence to differentiate, and as the tenants conceded that they had necessitated some repair by installing and removing a mantle, by damage to a bedroom wall when moving and by installing some wall paper or stickers, I find that this cost should be shared equally between the parties.

Postage - \$21.37 x 2 = \$42.74. There is no provision in the *Act* for reimbursement of parties for the costs of hearing preparation. This claim is dismissed.

Filing fee - \$50. As the application has succeeded on its merits, I find that the landlords are entitled to recover the filing fee for this proceeding from the tenants.

Security and Pet Damage Deposits – (\$750 x 2 = \$1,500). As authorized by section 72(2)(b) of the *Act*, I find that the landlords may retain the balance owed to them from the security and pet damage deposits in set.

Thus, I find that accounts balance as follows:

Tenants' credits		
Security deposit (no interest due)	\$ 750.00	
Pet damage deposit (no interest due)	<u>750.00</u>	
Sub total	\$1,500.00	\$1,500.00
Award to landlords		
Rent/loss of rent for October 2012	\$800.00	
Painting and repair	125.00	
Filing fee	<u>50.00</u>	
Sub total	\$975.00	- <u>975.00</u>
TOTAL balance to be returned to tenants		\$ 525.00

Conclusion

The landlords are authorized to retain \$975 from the tenant's security and pet damage deposits and must return the balance.

The tenants' copy of this decision is accompanied by a Monetary Order for \$525.00, enforceable through the Provincial Court of British Columbia, for service on the landlords if necessary.

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 03, 2013.
