



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD and FF

Introduction

This hearing was convened on the landlord's application of October 14, 2012 seeking a monetary award for unpaid rent/loss of rent, unpaid utilities, liquidated damages and the cost of changing locks after the tenant's left the fixed term rental agreement early. The landlord also sought recovery of the filing fee for this proceeding and authorization to retain the security and pet damage deposits in set off against the balance owed.

Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to monetary award for the claims submitted and in what amounts.

Background, Evidence and Analysis

This tenancy began on February 1, 2012 under a fixed term rental agreement set to end on January 31, 2013. Rent was \$895 per month plus 40 percent of the utilities. The landlord holds security and pet damage deposits of \$447.50 each, both paid at the beginning of the tenancy.

During the hearing, the parties concurred that the tenants had advised the landlord in June of 2012 that they were having a struggle with the rent and sought cooperation to end the tenancy early. The landlord posted the unit on Craigslist starting in June and with cooperation of the tenants began showing the unit throughout the summer but interest was relatively low.

On September 3, 2012, the tenants gave firm notice that they would be vacating the rental unit on September 30, 2012.

The parties continued their efforts to find new tenants, but when they had not succeeded, the landlord reduced the rent offered by \$100 per month and was able to start a new tenancy on November 13, 2012.

The landlord submitted the following claims on which I find as follows:

Rent/loss of rent for October and November 2012 – \$1,213.00. This claim includes the \$895 rent for October 2012 and \$318 the per diem for 12 days of November 2012 at the new rate of \$795 during which the rental unit remained vacant. Section 7 of the *Act* states that, if either party to a rental agreement suffers a loss due to the other's breach of the rental agreement or legislation, the non-compliant party must compensate the other for the loss. Section 45 of the *Act* states that a tenant's notice to end a fixed term agreement cannot take effect before the end of tenancy stated on the agreement. In the present matter, I find that the landlord's loss was a result of the tenants' breach of the fixed term agreement and that the landlord acted reasonably in attempting to minimize the loss. Therefore, this claim is allowed in full.

Rent differential - \$300. The landlord stated that when she had been unable to find new tenants after trying for several weeks, in an effort to minimize the loss, she lowered the rent by \$100 per month as the approaching holiday season would minimize the chance of find new tenants quickly. The landlord now claims the difference for the three month period to the end of the fixed term agreement. The claim is allowed.

Liquidated damages - \$500. Liquidated damages must be based on a genuine estimate of the administrative costs of finding new tenants. The landlord stated that the rate was set taking into account that she must travel 40 miles to the rental unit for showing. I find that the amount falls within the acceptable range for liquidated damages and the claim is allowed.

Change two door locks - \$15.10. Section 25 of the *Act* makes the landlord responsible for rekeying or changing locks prior to a new tenancy under normal circumstances. The landlord concurred that the tenants had returned the keys at the end of the tenancy and her only reason for changing the locks was that it was her standard practice. This claim is dismissed.

Fortis gas - \$79.77. This claim is based on 40 percent of billings for three separate periods at \$13.20 plus \$32.75 plus \$33.82. The tenants concurred with this claim and it is allowed in full.

BC Hydro - \$95.22. This claim is based on 40 percent of billings for two separate periods at \$65.67 plus \$29.55. The tenants concurred and the claim is allowed in full.

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

Security and pet damage deposits – \$447.50 x 2 = \$895. As authorized under section 72 of the Act, I hereby order that the landlord retain the security and pet damage deposits in set off against the balance owed.

Thus, I find that the landlord is entitled to a monetary award calculated as follows:

Award to Landlord		
Rent/loss of rent for October 2012	\$ 895.00	
Rent/loss of rent for 12 days of November 2012	318.00	
Rent differential from Nov. 2012 to Jan	300.00	
Liquidated damages	500.00	
Fortis gas	79.77.	
BC Hydro	95.22	
Filing fee	<u>50.00</u>	
Sub total	\$2,237.99	\$2,237.99
Tenants' Credits		
Security deposit (No interest due)	\$ 447.50	
Pet damage deposit (No interest due)	<u>447.50</u>	
Sub total	\$895.00	<u>- 895.00</u>
TOTAL (Balance remaining owed to landlord)		\$1,342.99

Conclusion

In addition to authorization to retain the security and pet damage deposits in set off, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$1,342.99** for service on the tenants.

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 15, 2013

Residential Tenancy Branch

