



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding E Y PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for damage to the unit, site or property, for compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Landlord's Agent said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on January 25, 2013. Based on the evidence of the Landlord's Agent, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants' absences.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Are there damages to the unit and if so how much?
4. Is the Landlord entitled to compensation for the damage and if so how much?
5. Are there other losses or damages and is the Landlord entitled to compensation?
6. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on October 1, 2011 as a fixed term tenancy with an expiry date of September 30, 2012. Rent was \$920.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$460.00 on September 14, 2011. The Landlord said the Tenants were issued a 10 Day Notice to End Tenancy for unpaid rent, dated June 18, 2012 with an effective vacancy date of June 29, 2012. The Landlord said the Tenants moved out of the unit on June 29, 2012. The Landlord continued to say they completed a condition inspection report for move in on September 14, 2011 with the Tenants and for the move out on June 29, 2012 without the Tenants.

The Landlord said that the Tenants breached the fixed term tenancy agreement by not paying the full June, 2012 rent. The Tenant had unpaid rent for June, 2012 in the amount of \$850.00 and therefore were evicted due to non payment of rent. The Landlord said the Tenants are responsible for the rent to the end of the fixed term tenancy which is September 30, 2012 or until the unit was rented to new tenants before September 30, 2012. The Landlord said the unit was rented to new tenants on January 15, 2013. The Landlord continued to say that they advertised the unit on line in three websites and advertised in two publications from July 6, 2012 to into January, 2013. Since the end of the tenancy the Landlord said they have been trying to communicate with the Tenants to resolve the dispute over unpaid rent and lost rental income, but to date they have been unsuccessful so they applied for dispute resolution.

The Landlord said they are requesting unpaid rent for June, 2012 in the amount of \$850.00 and lost rental income for July, August and September, 2012 in the amount of \$920.00 for each month the unit was not rented. In addition the Landlord is requesting \$361.79 for general cleaning and carpet cleaning, \$500.00 for the cost to remove items and garbage the Tenants' left in the unit, \$443.00 to replacement the stove, a balcony divider and a door and \$375.00 for repairs to the wall in the rental unit. The Landlord said they are also requesting \$300.00 as liquidated damages which is written into the tenancy agreement for the Landlord's cost to re-rent the unit. The Landlord submitted advertising receipts to confirm that they did advertise the unit and the costs to do the advertising.

The Landlord said they have supported their application with a copy of the tenancy agreement which confirms the tenancy as a fixed term with an expiry date of September 30, 2012. The Landlord also included a receipt for the general cleaning, the carpet cleaning, for hauling garbage and the repairs and replacement of items in the rental unit. As well the Landlord submitted photographs that illustrated the condition of the rental unit when the Tenants moved out. .

In closing the Landlord said their total monetary claim is for \$5,689.79.

Analysis

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45 of the Act says a tenant **may end a fixed term tenancy not earlier than the date specified in the tenancy agreement** and it must be with written notice at least one month prior to the date that rent is payable or with the agreement of the landlord.

The Tenants do not have the right under the Act to withhold part or all of the rent; therefore I find the Tenant is responsible for the unpaid rent for June, 2012 of \$850.00. Further I find that the Tenants are responsible for the Landlord's loss of rental income to the expiry date of the tenancy agreement of September 30, 2012. The Landlord has tried to mitigate their loss, but has been unable to rent the unit until January 15, 2013; therefore the Landlord has had a loss rental income from July to September, 2012, which is covered by the tenancy agreement with the Tenants. I find the Landlord has established grounds to be awarded the lost rental income for July, August and September, 2012 in the amount of \$2,760.00.

As well I find the Landlord has provided sufficient evidence in the form of advertising receipts to show the liquidated damages were a valid estimate of costs to rent the unit. In addition the Tenants agreed to the liquidated damage clause of \$300.00 in the tenancy agreement; therefore I award the Landlord the \$300.00 in liquidated damages.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

The Landlord's agent proved the general cleaning and carpet cleaning loss of \$361.79, the repairs of \$375.00, the replacement costs of \$443.00 and the dumping costs of \$500.00 existed and she verified the losses by providing receipts for the claims that the Landlord has made. I accept the Landlord's Agent's testimony that these damages and losses were caused by the Tenants and the costs were reasonable amounts to correct the issues. Consequently, I find the Landlord's Agent has established grounds to be awarded the costs for damages in the amount of \$1,679.79.

As the Landlord has been successful in this matter, they are also entitled to recover from the Tenants the \$100.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Unpaid rent	\$ 850.00	
	Lost rental income	\$ 2,760.00	
	Liquidated damages	\$ 300.00	
	Damages, repairs and replacements	\$ 1,679.79	
	Recover filing fee	\$ 100.00	
	Subtotal:		\$ 5,689.79
Less:	Security Deposit	\$ 460.00	
	Key Deposit	\$ 50.00	
	Laundry credit	3.65	
	Subtotal:		\$ 513.65
	Balance Owing		\$ 5,176.14

Conclusion

A Monetary Order in the amount of \$5,176.14 has been issued to the Landlord. A copy of the Order must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: April 16, 2013

Residential Tenancy Branch