



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking authority to retain the tenants' security deposit, a monetary order for money owed or compensation for damage or loss and for alleged damage to the rental unit, and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and the tenants acknowledged receiving the landlord's evidence. There was no evidence from the tenants.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to retain the tenants' security deposit, a monetary order, and to recover the filing fee?

Background and Evidence

The undisputed evidence shows that this tenancy began on October 1, 2011, ended on January 31, 2013, monthly rent was \$975, and the tenants paid a security deposit of \$487.50 at the beginning of the tenancy.

The landlord's monetary claim is \$656.25, comprised of loss of revenue for the period of February 1-14, 2013, for \$487.50, drape/blind cleaning of \$45, general suite cleaning for \$75, and the filing fee of \$50, less a tenant credit of \$1.25.

In support of their application for dispute resolution, the landlord contended that due to the tenants' insufficient notice that they were ending the tenancy, they suffered a loss of rent revenue in the amount of \$487.50. In explanation, the landlord said that they received the tenants' written notice on January 1, the date of the Notice, that the tenancy was ending on January 31, 2013. The landlord submitted that the rental unit was advertised using their continuous online and newspaper advertising and that they were successful in securing a new tenancy effective February 15, 2013.

The landlord supplied copies of the advertising.

As to the landlord's request for drape/blind cleaning and suite cleaning, the landlord argued that the tenants agreed to these costs, as shown by the agreement signed by tenant, CM, submitted by the landlord.

Other relevant evidence supplied by the landlord included the tenants' written notice of ending the tenancy, the condition inspection report, the tenancy agreement, and a tenant ledger sheet.

In response, the tenants argued that the landlord was not entitled to loss of revenue as the rental unit was vacated by January 27, 2013, and that they did not live in the rental unit in February. The tenants also contended that the landlord was supplied adequate notice of the tenancy ending.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the

claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

As to the issue of loss of revenue, Section 45(1) of the Act requires a tenant to give written notice to end the tenancy that is not earlier than one month after the date the landlord receives the notice and is at least the day before the day in the month that rent is payable under the tenancy agreement. In other words, one clear calendar month before the next rent payment is due is required in giving notice to end the tenancy.

In more plain language, if the tenants wanted to end the tenancy by January 31, 2013, they were required by the Act to give written notice no later than December 31, 2012.

In the case before me, although it is clear the tenants believed they were giving sufficient notice, by use of the term "30 days notice" language used in their written notice, under the Act this written notice was one day short of being sufficient. Therefore the tenants are liable to the landlord for loss of rent revenue for the following month, February 2013, under the terms of the tenancy agreement and the Act.

I am also satisfied that the landlord took reasonable steps to minimize their loss by marketing the rental unit for re-rent in a timely manner as the landlord secured a new tenant for February 15, 2013.

I therefore find that the landlord has proven a monetary claim for loss of rent revenue for February 1-14, 2013, in the amount of \$487.50.

As to the issue of blind/drape for \$45 and suite cleaning for \$75, as the tenants signed a document agreeing to these costs, I allow the landlord's monetary claim of \$120.

I find the landlord's application had merit and I award them recovery of the filing fee of \$50.00.

Due to the above, I find the landlord has proven a total monetary claim of \$656.25, comprised of loss of revenue of \$487.50, suite cleaning of \$75, drape/blind cleaning of \$45, and recovery of the filing fee of \$50, less a tenant credit of \$1.25.

At the landlord's request, I direct the landlord to retain the tenants' security deposit of \$487.50, in partial satisfaction of their monetary claim, and I grant the landlord a final,

legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$168.75, which I have enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are advised that costs of such enforcement may be recoverable from the tenants.

Conclusion

The landlord's application is granted, they may retain the tenants' security deposit in partial satisfaction of their monetary award, and they are granted a monetary order for the balance due in the amount of \$168.75.

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* and is being mailed to both the applicant and the respondents.

Dated: May 17, 2013

Residential Tenancy Branch

