



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COAST REALTY GROUP (POWELL RIVER) LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction:

The landlord applies for dispute resolution, and requests a monetary award for loss of rental income, and costs of debris removal and cleaning, related to a premature ending of a fixed term tenancy agreement. The landlord also seeks an order to retain the tenants' security deposit in partial satisfaction of the monetary award.

Issues to be decided:

Is the landlord entitled to compensation from the tenants?
May the security deposit be retained by the landlord?

Background and Evidence:

The parties entered into a 1 year fixed term tenancy agreement for the subject premises, to begin February 7, 2011 and end February 28, 2012. At the end of that term, another 1 year term was agreed to, ending February 28, 2013. Monthly rent was \$750.00. A security deposit was paid by the tenants of \$375.00, and a pet damage deposit of \$375.00. These are retained by the landlord.

The tenants vacated on January 26, 2013, and paid no rent for the final month of their tenancy. They assisted in trying to locate new tenants. There were 2 showings to prospective tenants, and new tenants were secured by the landlord, who began their new tenancy March 1, 2013. They could not begin earlier, as there were still renting in other premises in February.

The tenants left some items behind when they vacated, both in and out of the premises. They failed to clean the oven. The landlord arranged for cleaning and debris removal after the tenants had left, at a cost of \$150.00 and \$41.33.

Analysis:

During a fixed term tenancy, neither the landlord nor the tenant may end the tenancy except for cause or by written agreement of both parties. Neither of those has occurred in this case. Section 45(2) and 53 of the Residential Tenancy Act specify that any notice by a tenant to end the tenancy sooner than the end of the fixed term, self-corrects to end the tenancy at the end of the fixed term. In other words, the premature ending of the tenancy by the tenants was a breach of the tenancy agreement.

Section 7(2) requires a landlord to do whatever is reasonable to minimize the loss due to the tenant's breach. I accept that the landlord has taken such reasonable steps, by securing a new tenant within one month of the vacating by the former tenants.

I find the landlord has lost rental income for the month of February, and that the tenants are liable for such loss, as a result of the premature termination of the tenancy by the tenants. I accept that reasonable mitigation steps were taken by the landlord to limit the rental income loss to this single month. The landlord is awarded lost rental income for February in the sum of \$750.00.

The tenants failed to adequately clean the oven, and left items behind. I accept that the landlord incurred expense to clean these items after the tenants vacated, which expense totalled \$191.33. The landlord is awarded this sum.

As the landlord is successful with this claim, I also award the recovery of the \$50.00 filing fee from the tenants.

The total awarded is \$991.33. The landlord is entitled to retain the \$375.00 security deposit in partial satisfaction of this claim, leaving a balance of \$616.33. The landlord is also entitled to retain \$191.33 of the pet damage deposit, leaving a balance of \$425.00 owing by the tenants to the landlord. I note that the Act prevents the landlord from retaining any portion of the pet damage deposit to satisfy unpaid rent, or loss of rental income (unless agreed to by the tenants). This therefore leaves a balance of the pet damage deposit of \$183.67, owing by the landlord to the tenants.

As a result of this decision, it may be that the tenants would prefer that the pet damage deposit be applied as against the sum they owe to the landlord. If so, the tenants can confirm this in writing, which would leave an ultimate balance owing by the tenants to the landlords of \$241.33.

Conclusion:

The landlord is awarded the sum of \$991.33.

I order pursuant to section 38(1) that the full amount of the security deposit (\$375.00) be retained by the landlord, in partial satisfaction of the monetary award.

I further order pursuant to section 38(1) that a portion of the tenants' pet damage deposit (\$191.33) be retained by the landlord, in further partial satisfaction of the monetary award.

I further order that the remaining balance of the award due to the landlords, equalling \$425.00 (\$991.33 - \$375.00 - \$191.33) be paid immediately by the tenants to the landlord.

I further order that the remaining balance of the tenants' pet damage deposit of \$183.67 be returned by the landlord to 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*.

Introduction

TEXT

Issue(s) to be Decided

TEXT

Background and Evidence

TEXT

Analysis

TEXT

Conclusion

TEXT

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: May 10, 2013

Residential Tenancy Branch

