



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0817581 B.C. LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR MNSD MNDC FF

Preliminary Issues

The Tenants submitted a written statement which they said was mailed to the Landlord. The Landlord stated that he had not received the statement. Therefore, I instructed the parties that I would not be considering the Tenants' written submission and they could provide their statement orally during this proceeding.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on March 14, 2013, by the Landlord to obtain a Monetary Order for: unpaid rent; to keep all of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlord, and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Landlord be granted a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: the tenancy agreement and two receipts for advertising the rental unit.

The parties confirmed they entered into a written fixed term tenancy agreement that began on October 1, 2012, and was set to end on September 30, 2013. Rent was payable on the first of each month in the amount of \$1,100.00 and on September 14, 2012 the Tenants paid \$550.00 as the security deposit. Although the parties conducted inspection walkthroughs of the unit no condition inspection report forms were completed or signed. The initial walkthrough took place on approximately September 12, 2013, and the move out walkthrough took place on March 12, 2013. The Tenants provided the Landlord with their forwarding address on March 12, 2013.

The Tenants testified that they approached the Landlord in January 2013 complaining about noise coming from the neighboring rental unit and explained to him that if the problem is not resolved they would have no choice but to move. Then on January 26, 2013, they attended the Landlord's residence to pay their February rent, and advised the Landlord at that time that they would be moving out by March 1, 2013.

The Tenants said they offered to have their phone number listed on the advertisement and initially said they would assist in finding replacement tenants. The Landlord waited until February 12, 2013 to place the advertisement and left town on vacation. They showed the unit to several people and two were very interested in taking the unit. He instructed them to call the Landlord, which they did several times and left messages. The Tenants said these people called them back saying they had left several messages and no one was calling them back. They too left messages for the Landlord that were not returned so they just went ahead and moved out of the unit on March 1, 2013.

The Landlord initially stated that he was not told the Tenants were moving out until February 4 or 5th, 2013. He then changed his statement saying that when they paid him rent on January 28 or 29, 2013, they told him it was not going well with the neighbors and they were going to have to start looking for another place. He talked to the neighbors around the first week of February and requested that they keep the noise down. On February 6th, 2013 he had a discussion with the Tenants and told them "fine, you can move out if I find someone else". The Landlord stated that each time he discussed moving out with the Tenants he told them they would be responsible for the rent because it was a fixed term lease they had signed.

The Landlord argued that when he drove past the unit in early March he saw the Tenants loading up a moving truck. He approached the Tenant, who was in the back of the truck, and told him that he did not know he was moving out and he was responsible for rent because the unit had not been re-rented.

The Tenants argued that the Landlord provided mistruths because he knew they were moving out back in January 2013. Once they moved they attempted to contact the Landlord and left up to six messages on the Landlord's cell phone and business phone requesting to complete the walk through so they could get their security deposit back. Then on March 12, 2013, the Landlord finally answered his phone and he asked the Tenant if he could do the inspection right then and there. The Tenant agreed and

attended the unit. The walk through was completed March 12, 2013 and he was told by the Landlord that everything was okay.

The Landlord is seeking compensation for March and April 2013 rent of \$2,200.00 (2 x \$1,100.00); plus \$78.97 advertising fees; and \$80.00 for four hours of cleaning that his wife completed prior to March 12, 2013. The Landlord stated that he was treating the unit as being abandoned and therefore his wife was allowed to go inside and do some touch up cleaning so they could re-rent it as soon as possible.

The parties were given the opportunity to settle these matters. However, when they were not able to reach an agreement I explained that I would hear closing remarks and would then make an arbitrated decision.

In closing the Tenants argued that the rental unit was re-rented in April because they attended the unit to track down some mail and they saw furniture in the unit when they looked through the windows. Also, they were finished moving out March 1, 2013, but they returned March 2, 2013, to remove the final load of debris and do the touch up cleaning. They left the unit spotless and there was no need for the Landlord's wife to do any cleaning. The first time the Landlord told them they were responsible for the rent was when he stuck his head in the truck on March 1, 2013.

The Landlord stated that the Tenants still had possession of the rental unit until March 2, 2013. He did not re-rent the unit in April he re-rented it effective May 1, 2013. Upon review of the new tenancy agreement the Landlord advised that he entered into the agreement with the new tenant on March 11, 2013 but it did not start until May 1, 2013, because they had to give their notice at their old place. The security deposit was paid March 11, 2013, at which time the Landlord agreed that the new tenant could have access to the unit early because it was vacant. The keys were handed over to the new tenant the next day, March 12, 2013, after the move out inspection.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 45 of the Act stipulates that a tenant may end a fixed term tenancy agreement by providing the Landlord thirty days written notice to end the tenancy effective on a date that is not prior to the end of the fixed term.

In this case the Tenants ended the tenancy prior to the end of the fixed term, without providing written notice, in breach of section 45 of the Act. I find they had completely vacated the unit by March 2, 2013, which is when they attended to remove the final load of debris. The Landlord entered into a new tenancy agreement on March 11, 2013, and handed over possession of the unit to the new tenants on March 12, 2013. Therefore, I find the Tenants' obligation to pay for the unit ended when possession was turned over to the new tenants on March 12, 2013. Accordingly, I award the Landlord loss of rent for the period of March 1 – 11, 2013, at a daily rate of \$36.16 for a total amount of **\$397.76** (11 x \$36.16), pursuant to section 62 of the Act.

In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenants agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

The Landlord has claimed \$78.97 for advertising costs which the Tenants deny responsibility for. In the absence of a signed written agreement stipulating the Tenants would pay to advertise and show the unit, I find there to be insufficient evidence to meet the Landlord's burden of proof. Accordingly, the claim for advertising is hereby dismissed, without leave to reapply.

The Landlord is seeking cleaning costs of \$80.00 and submitted that the unit was cleaned by his wife, prior to the walkthrough inspection with the Tenants. The Tenants were not notified that the Landlord had entered the unit and they were not given the opportunity to rectify any cleaning concerns. Therefore, I find the Tenants are not responsible for cleaning costs incurred by the Landlord. Accordingly, the Landlord's claim for cleaning is dismissed, without leave to reapply.

The Landlord has only been partially successful with his application; therefore I award partial recovery of the filing fee in the amount of **\$25.00**.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Loss of rent March 1 – 11, 2013	\$ 397.76
Filing Fee	<u>25.00</u>
SUBTOTAL	\$ 422.76
LESS: Security Deposit \$550.00 + Interest 0.00	<u>-550.00</u>
Offset amount due to the TENANTS	<u>\$ 127.24</u>

I HEREBY ORDER the Landlord to return the **\$127.24** balance of the security deposit to the Tenants forthwith.

Conclusion

The Tenants have been issued a Monetary Order in the amount of **\$127.24**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: June 06, 2013

Residential Tenancy Branch

