



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 April 4, 2013 seeking a monetary award for unpaid rent, loss of rent, unpaid utilities, and failure to use funds given to the tenants for the agreed purpose after the tenants breached a fixed term agreement by leaving the tenancy early. The landlord also sought recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing sent by registered mail on April 8, 2013 to the forwarding address provided by them to the landlord in writing, the tenants did not call in to the number provided to enable their participation in the telephone conference call proceeding. Therefore, it proceeded in their absence.

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 Marcy 1, 2011 under a one-year fixed term tenancy agreement signed on February 9, 2011 and set to end on February 28, 2012. Rent was \$1,850 per month the landlord holds security deposit of \$925 paid on March 1, 2011.

During the hearing, the landlord gave evidence that, despite having requested a fixed-term tenancy, the tenants had given written notice dated May 17, 2011 that they would be vacating the rental unit on May 31, 2011. The notice, submitted into evidence, stated that the tenants had been given an opportunity to purchase a house that was “too good an opportunity to refuse.”

The notice stated that if the landlord was unable to find new tenants for June 1, 2011, “please accept our damage deposit as compensation.”

The landlord stated that tenants vacated as planned, leaving behind unpaid utilities bills, an unfinished parts replacement for which she had already paid, and unpaid rent and loss of rent.

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

Unpaid rent/loss of rent for June, July and August 2011 - \$5,550. 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 7 imposes a duty on the claimant to do whatever is reasonable to minimize their 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.

The landlord submitted into evidence a copy of an advertisement with photo that she ran in the Craigslist and Castanet and web sites beginning on May 18, 2011. The landlord also submitted names and contact numbers of approximately 40 parties who had enquired about or view the rental unit between May 18, 2011 and August 18, 2011 when the tenant who moved in on September 1, 2011 committed to the tenancy.

The landlord stated that it was very unusual for the property to remain unrented for so long and submitted evidence that the September 1, 2011 tenancy ended on April 30, 2012 and the vacancy was filled the following day by tenants who remained until March 15, 2013, followed by a new tenancy on April 15, 2013.

I am persuaded that the landlord did whatever was reasonable to in her efforts to find new tenants and minimize her loss.

However, section 3 of the Residential Policy Guideline states that where tenants have fundamentally breached the tenancy agreement and the landlord intends to sue for loss of rent, the tenants must be put on notice of the landlord's intends to do so. I find by the content of the tenants' notice that they were clearly aware of their obligation with respect to the rent for June 2011. However, I have no evidence that the landlord advised the tenants that she intended to sue for loss of rent beyond that, and the issue is further obscured by the landlord's delay in commencing this action. Therefore, I will allow the claim for rent for June 2011 only.

Failure to use funds for the landlord for the agreed to purpose - \$200. The landlord gave evidence that the female tenant has asked her to purchase a used stove top and range hood from her mother's friend which was available for \$200. The landlord agreed and gave her a cheque for the money on February 22, 2011 which the tenant cashed on February 28, 2011 as verified by copy of it submitted into evidence. When the landlord asked about the items several weeks later, the tenant advised her they were no longer available and promised to return the (already cashed) cheque when she was able to get it back from her mother. The items never materialized and the tenant did not return the \$200. The claim is allowed.

Unpaid utilities - \$946.69. As per the rental agreement, the landlord had provided the tenants with copies of invoices for electrical charges, submitted into evidence, which the tenants promised to pay after viewing the bills and their photo of the electric meter at the beginning of the tenancy. The landlord stated that payment was never made. This claim is allowed.

Filing fee - \$100. 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 deposit – (\$925). As agreed by the tenants in their written notice and as authorized under section 72 of the Act, I hereby order that the landlord retain the security 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 June 2011	\$1,850.00
Fail to use funds as agreed	200.00
Unpaid utilities	946.69
Filing fee	<u>100.00</u>
Sub total	\$3,096.69
Less security deposit (No interest due)	<u>\$ - 925.00</u>
TOTAL (Balance remaining owed to landlord)	\$2,171.69

Conclusion

In addition to authorization to retain the security deposit 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 **\$2,171.69** 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: June 21, 2013

Residential Tenancy Branch