



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR; MNDC; MND; FF

Introduction

This is the Landlords' application for a Monetary Order for unpaid rent and damages; compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

The Landlord (SP) testified that he served the Tenants KF and KW with the Notice of Hearing documents and documentary evidence by registered mail to addresses that he believed were the Tenants' new residential addresses. SP stated that the Tenants did not provide their forwarding addresses in writing at the end of the tenancy. The Landlords provided registered mail receipts in evidence.

The Tenant BS was not served with the documents by registered mail because the Landlords did not know where she was living. However, BS signed into the Hearing and with her consent, the Landlords' application was amended to include her as a Respondent.

I find that the Landlords did not provide sufficient evidence that they had served KF and KW in accordance with the provisions of Section 89 of the Act. However, KF signed into the Hearing and therefore, I find that she was sufficiently served pursuant to the provisions of Section 71(2)(c) of the Act.

Co-tenants are jointly and severally responsible for damage or loss during a tenancy. It is up to the Tenants to apportion any monetary award between themselves. SP indicated that he wished to proceed against the Tenants KF and KW only. **The Landlords' application against KW is dismissed without leave to re-apply.**

Issues to be Decided

- Are the Landlords entitled to a monetary award for half a month's loss of revenue, the cost of advertising the rental unit, and the cost of shampooing the carpets at the end of the tenancy?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This tenancy was a fixed term tenancy, beginning August 15, 2012, and ending August 15, 2013. Monthly rent was \$995.00. The tenancy agreement indicates that rent was due on the first day of each month, however the parties agreed that the rent was due on the 15th day of each month. The Tenants paid a security deposit in the amount of \$497.50 on July 30, 2012.

The Tenants moved out of the rental unit on or about April 15, 2013, after giving written notice. A copy of the Tenants' notice to end the tenancy, dated March 7, 2013, was provided in evidence. The notice indicates that, "due to financial and health related factors", the Tenants were ending the tenancy. It also stated that the Tenants had recently discovered that "the downstairs apartment was found to contain asbestos, mould, and animal droppings, which we find to be a significant health concern" and that "the three of us do not find ourselves to be completely comfortable in this neighbourhood. As a result of these factors, [KW] has decided to move in with his partner to save money and it is unrealistic for the two of us to maintain such a large apartment."

The Tenants acknowledged that they broke the lease early, but stated that there was mould in the rental unit. They also stated that the Strata was to replace some windows, but never did and that it took two months of a fire alarm to be put in. They stated that they were too busy to give more notice.

SP stated that he told the Tenants it would be all right to break the lease early as long as he could find new tenants for April 15, 2013, but that he would expect them to be responsible for paying rent until new tenants could be found. SP testified that he put an ad in a popular on-line site right away and was able to find new tenants for May 1, 2013. The Landlords provided copies of invoices for the on-line ads in evidence.

The Tenants stated that the first ad was on-line before they even gave their written notice and that the Landlords would have had to place an ad anyway at the end of the lease.

SP stated that he placed the ad when the Tenants told them they were moving out and that he knew that they would be giving written notice.

SP testified that the Tenants did not shampoo the carpets at the end of the tenancy. The Landlords seek an award in the amount of \$125.00 for the cost of shampooing the carpets.

The Tenants stated that they would have shampooed the carpets, but were not given an opportunity to do so.

SP asked to set off the security deposit against the Landlords' monetary award, which is calculated as follows:

Loss of revenue (April 15 – May 1, 2013)	\$497.50
Cost of placing on-line ads	\$91.97
Cost of shampooing carpets	<u>\$125.00</u>
TOTAL CLAIM	\$714.47

Analysis

Section 45 of the Act provides the only ways a tenant can end a tenancy. This was a term lease, and therefore the Tenants cannot legally end the tenancy earlier than the date specified in the tenancy agreement as the end of the tenancy, unless the Tenants had cause to end the tenancy under the provisions of Section 45(3) of the Act.

Section 45(3) of the Act states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the landlord receives the notice. In this case, I find that the Tenants provided insufficient evidence that there was mould in the rental unit, or dangerous substances in the “downstairs apartment” that would have presented a health problem to the Tenants. In addition, I find it probable that the Tenants ended the tenancy for financial reasons. I find that the Tenants were not entitled to end the tenancy under the provisions of Section 45(3) of the Act.

I find that the Landlords suffered a loss as a result of the Tenants' breach of the tenancy agreement and the Act. I find that the Landlords attempted to minimize their loss by advertising the rental unit immediately, and that they are entitled to recover their loss of revenue from the Tenants. Therefore, I award the amount of **\$497.50** for this portion of their claim.

Normally, there is no cost to placing ads on the on-line site. However, the Landlords paid for the ads in order that they would automatically be on the top of the list of ads, and therefore more visible to people seeking new accommodation. I find that this is a reasonable cost and that the Landlords were attempting to mitigate their loss of revenue. I allow the Landlords' claim in the amount of **\$91.97** for this portion of their claim.

The Landlords did not provide a receipt for the cost of shampooing the carpets, and therefore this portion of their application is dismissed.

Further to the provisions of Section 72 of the Act, the Landlords may apply the security deposit towards partial recovery of their monetary award.

The Landlords have been successful in their application and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Tenants.

I hereby provide the Landlords a Monetary Order against the Tenants KW and BS, calculated as follows:

Loss of revenue	\$497.50
Advertising costs	\$91.97
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$639.47
Less security deposit	<u>- \$497.50</u>
TOTAL AMOUNT DUE TO THE LANDLORDS AFTER SET-OFF	\$141.97

Conclusion

The Landlords' application against the Tenant KW is dismissed without leave to reapply.

The Landlords are provided a Monetary Order in the amount of **\$141.97** for service upon the Tenants KF and BS. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: July 26, 2013

Residential Tenancy Branch