



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlords' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and unpaid rent, for authority to retain the tenant's security deposit, 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 no party raised any issue regarding service of the evidence; the tenant confirmed receiving the landlords' documentary evidence and not having filed any documentary evidence himself.

Thereafter all parties gave affirmed testimony, 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 oral and documentary evidence 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

Are the landlords entitled to monetary compensation, to retain the tenant's security deposit, and to recover the filing fee?

Background and Evidence

I heard undisputed evidence that the parties entered into a written tenancy agreement in which the tenancy was to begin on May 1, 2013, that the tenancy was for a fixed term, which expired on April 30, 2014, monthly rent was \$2600, and that the tenant paid a security deposit of \$1300.

There is also no dispute that the tenant never moved into the rental unit.

The landlords' monetary claim is as follows:

Loss of rent revenue	\$1950
Cost of ads	\$200
Cost of new placement	\$1300
Filing fee	\$50
Registered mail fee	\$12.13
Placement fee tax	\$65
Strata move-in fee	\$200
Retention of security deposit	(\$1300)
TOTAL	\$2477.13

The landlords' relevant documentary evidence included: a rent cheque for the May 2013 rent showing that it was returned, a statement of account with the strata management company, showing a move-in fee of \$200, a statement from the landlord's property management company showing an invoice for \$1365, a written summary of events, copies of cheques made payable to the landlord, issued by the tenant for the May 2013 rent of \$2600 and a partial rent payment for April, for \$433.33, a form K for conformance with strata bylaws, signed by the tenant, the tenancy agreement for a tenancy to commence on May 1, 2013, and email communication between relevant parties to this dispute.

In support of and in response to the landlord's application, the parties provided the following submissions:

1. Loss of rent revenue

The landlord claimed for loss of rent revenue as the tenant broke the fixed term agreement as he never moved into the rental unit. The landlord submitted that although

the tenancy was to begin on May 1, 2013, the parties agreed that the tenant would move in early, for the last week of April, for a payment of \$433.33.

The landlord submitted that even though the tenant provided insufficient notice that he was breaking the fixed term tenancy agreement, they minimized their loss by immediately taking steps to re-rent the rental unit, and found new tenants by mid May 2013.

The landlord calculated her claim of \$1950 at a monthly rate of $\$2600/4=\650 for a weekly rate, and submitted that the tenant was obligated for three weeks, which was the last week in April and the first two weeks in May.

In response, the tenant submitted that he phoned the male landlord immediately when he learned that his real estate offer had been successful, as he purchased a home and no longer needed rental property.

The tenant contended that the landlords knew he was looking to buy a home, and, according to the tenant, the male landlord said that a signed tenancy agreement was just a formality and that he could give a short notice of moving out.

The tenant said that he thought the landlord's keeping the security deposit would be enough compensation to the landlords for not going through with the fixed term agreement.

In response to my question, the tenant agreed that he had an agreement with the landlords for a payment for the last week of April for \$433.33.

2. Costs of ads

The landlord confirmed that no proof of the costs of the advertisements was provided, although she was certain that a cost had been incurred. The landlord stated that the ads were on Craigslist.

3. Cost of new placement, tax for the new placement fee

The landlord explained that this fee was the cost of hiring their agent in the dispute city, as they live out of town, to find a replacement tenant after they were informed the tenant was not moving in.

4. Strata charged move-in fee

The landlord said that the tenant owed this amount as he signed the form K, agreeing to strata charges, and that a move-in fee of \$200 had been placed on their account. The landlord said that she paid this amount, and in response to my question, she said that she never contested the charge with the strata council.

In response, the tenant said that he was told by the landlord's agent that when he was ready to move in, he was to phone the building manager and book a move-in time. The tenant said that he never phoned to book a time as he never moved in and was not sure why he was being charged for a fee.

The landlord also is requesting other fees, such as the filing fee and registered mail costs.

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 landlords 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.

Loss of rent revenue-

I find the landlords and the tenant entered into a valid, enforceable fixed term tenancy contract and that the tenant was responsible for paying rent, beginning May 1, 2013, according to the terms of the agreement, whether he moved in or not.

As to the issue of unpaid rent, Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord written notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In other words, the tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term. The obligations of the tenant commence even if the tenant never moves into the rental unit, when the tenancy agreement is executed.

As such, I find the tenant was responsible to pay monthly rent until the end of the fixed term, subject to the landlord's requirement that they take reasonable measures to minimize their loss.

I find the landlord submitted sufficient oral and documentary evidence that they mitigated their loss as indicated by having a new tenant for May 15, 2013.

I therefore find the landlord has proven her monetary claim of loss of rent revenue for one half of a month, or \$1300 for May.

As to the claim of \$650 for one week in April, I find the parties had a verbal agreement that the tenant would pay \$433.33, as shown by the cheque, subsequently dishonoured, for the last week in April, and that he failed to pay this amount. I therefore approve the landlord's claim for unpaid rent for April, for the amount of \$433.33.

I therefore find the landlords are entitled to a monetary award of \$1733.33 for loss of rent revenue.

Costs of ads

I find the landlords submitted insufficient evidence that they incurred a cost for advertisements, as the only advertisements mentioned by the landlords were on a free, online advertising site. I therefore dismiss the landlords' claim for \$200, without leave to reapply.

Cost of new placement, tax for the new placement fee

As to the landlords' request for agent fees, I find that the landlords have chosen to incur costs that cannot be assumed by the tenant. I do not find the tenant to be responsible for the landlord choosing to rent a property in another town from where the landlords reside, which would then require the landlords to secure the services of an agent. The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of Act and not for costs incurred to conduct a landlord's business, such as hiring an agent. Therefore, I find that the landlord may not claim costs for hiring an agent, as they are costs which are not named by the *Residential Tenancy Act*. I therefore dismiss the landlords' claim for \$1365, without leave to reapply.

I likewise for the same reason dismiss the landlords' claim for registered mail expenses.

Strata charged move-in fee

I accept that the tenant did not schedule a move-in time with the building manager and as such, I do not find that the landlord has presented a reason that the tenant would be charged for such a fee. I was also persuaded by the landlord's admission that she did not contest the charge affixed to her account; rather she paid the fee knowing that the tenant never moved in.

I also was presented no evidence, such as the specific strata bylaw, which required a charge of \$200.

I find the landlords submitted insufficient evidence that the tenant was obligated under the Act or the tenancy agreement that he would be charged for a move-in fee, when he failed to move in.

I therefore dismiss the landlords' monetary claim of \$200, without leave to reapply.

Filing fee

I find the landlords' application had merit and I award them recovery of the filing fee of \$50.

Due to the above, I find the landlord is entitled to a total monetary award of \$1783.33, comprised of loss of rent revenue for \$1733.33 and the filing fee of \$50.

Conclusion

The landlords' application for monetary compensation is granted in part.

At the landlords' request, I direct them to retain the tenant's security deposit of \$1300 in partial satisfaction of their monetary award of \$1783.33 and I grant the landlords a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$483.33, which I have enclosed with the landlords' Decision.

Should the tenant fail to pay the landlords 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 tenant is advised that costs of such enforcement are recoverable from the tenant.

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 applicants and the respondent.

Dated: August 16, 2013

Residential Tenancy Branch

