



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNDC, MNSD, FF

Introduction

This hearing concerns an application by the landlords for a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security and / or pet damage deposit(s) / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlords are entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from April 1, 2013 to April 1, 2014. Monthly rent of \$1,100.00 is due and payable in advance on the first day of each month. A security deposit of \$500.00 and a pet damage deposit of \$500.00 were collected. A move-in condition inspection report was completed with the participation of both parties.

The tenants vacated the unit on June 1, 2013, and a move-out condition inspection report was completed on June 2, 2013 with the participation of both parties. The tenants provided their forwarding address on the report, however, during the hearing the tenants provided a new / current address.

Following the end of the tenancy, the landlords succeeded in finding new renters effective September 1, 2013. However, in their application, the landlords seek loss of rental income limited to the months of June and July 2013.

In summary, e-mails exchanged between the parties during April and May address miscellaneous concerns identified by the tenants about the unit, and responses to these concerns by the landlords. Concerns include, but are not necessarily limited to, the

condition of carpets within the unit (smells), the presence of bedbugs and / or ants, and / or fleas in the unit, difficulties with the heat thermostat, noises heard in the unit from the upstairs, use of weed killer in the yard, and so on. It appears that some of these concerns were exacerbated by the tenants' apprehensions around how they may have a negative impact on the health and well-being of their soon to be born baby.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 45 of the Act addresses **Tenant's notice**, in part as follows:

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) 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.

Section 7 of the Act speaks to **Liability for not complying with this Act or a tenancy agreement**:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**, in part as follows:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 37 of the Act addresses **Leaving the rental unit at the end of a tenancy**, in part as follows:

37(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Based on the documentary evidence and testimony, the various aspects of the landlords' claim and my findings around each are set out below.

\$2,200.00: *loss of rental income for June & July (2 x \$1,100.00.)*

I find that the tenants' manner of ending the fixed term tenancy does not comply with the above statutory provisions. I also find that the landlords undertook to mitigate the loss of rental income by advertising for new renters in a timely fashion. Additionally, I find there is insufficient evidence that the unit failed to comply with the "health, safety and housing standards required by law." Further, I note that there is no evidence that the tenants sought to remedy any of their concerns by filing an application for dispute resolution, seeking such things as follows:

- orders instructing the landlords to comply with the Act, regulation or tenancy agreement;
- orders instructing the landlords to make emergency repairs for health or safety reasons;

- orders instructing the landlords to make repairs to the unit, site or property; or
- orders instructing the landlords to provide services or facilities required by law.

Following from all of the foregoing, I find that the landlords have met the burden of proving entitlement to the full amount claimed.

\$78.75: *cleaning in the unit.*

Having given particular consideration to the comparative results of the move-in and move-out condition inspection reports, I find that the landlords have failed to meet the burden of proving entitlement to this aspect of the claim. In short, I am satisfied that the unit was left “reasonably clean” after the end of tenancy. This aspect of the claim is therefore hereby dismissed.

\$18.20: *cost of registered mail.*

Section 72 of the Act addresses **Director’s orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the application is hereby dismissed.

\$50.00: *filing fee.*

As the landlords have achieved a measure of success with their application, I find that they have established entitlement to the full amount claimed.

Sub-total: \$2,250.00 (\$2,200.00 + \$50.00)

I order that the landlords retain the security deposit of \$500.00, and the pet damage deposit of \$500.00 [**total: \$1,000.00**] and I grant the landlords a **monetary order** for the balance owed of **\$1,250.00** (\$2,250.00 - \$1,000.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords in the amount of **\$1,250.00**. Should it be necessary, this order may be served on the tenants, filed in the 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: September 13, 2013

Residential Tenancy Branch

