



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MND, MNDC, MNSD, FF
MNDC, MNSD

Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as compensation for unpaid rent / 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 deposit and pet damage deposit / and recovery of the filing fee; and ii) by the tenants for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and return of the security deposit and pet damage deposit.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

A previous hearing was held in the dispute between these parties on June 25, 2013, with a decision issued by that same date. While the tenants attended the hearing, the landlord did not. Pursuant to the decision the landlord's application was dismissed, and a monetary was issued in favour of the tenants in the amount of \$1,500.00.

Thereafter, the landlord applied for review on the basis that she was unable to attend the hearing because of circumstances that could not be anticipated and / or were beyond her control. By way of review consideration decision dated August 29, 2013, the landlord's application was granted, and the decision and order dated June 25, 2013 were suspended pending the outcome of a new hearing. Both parties attended this new hearing and gave affirmed testimony.

Pursuant to a written tenancy agreement, the fixed term of tenancy is from September 1, 2012 to August 31, 2013. Monthly rent of \$1,500.00 is due and payable in advance

on the first day of each month. A security deposit of \$750.00 and a pet damage deposit of \$750.00 were collected. There is no move-in condition inspection report in evidence. By way of text message on March 3, 2013, the tenants informed the landlord of their intent to end tenancy. Thereafter, by letter dated March 3, 2013 the tenants more formally gave notice to vacate the unit on March 31, 2013. The tenants testified that they wished to end the tenancy because they were tired of recurring flooding on the surrounding property. The landlord claims that the letter was delivered to her on March 20, 2013, and back-dated by the tenant to March 3, 2013. The tenants had vacated the unit by the end of March 2013, around which time they provided the landlord with their forwarding address. There is no move-out condition inspection report in evidence.

The landlord claims that she began on-line advertising for new renters around mid-March, and that new renters were found effective from May 1, 2013.

The landlord filed her application for dispute resolution on April 2, 2013. The tenants filed their application for dispute resolution on May 27, 2013.

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

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

TENANTS

\$1,500.00 (\$750.00 + \$750.00): *repayment of the security and pet damage deposits*

To be determined below.

\$400.00: *compensation for loss of son's car from flooding*

During the hearing the tenants withdrew this aspect of their application.

LANDLORD

\$550.00: *unpaid rent for March 2013*

The tenants do not dispute this aspect of the landlord's application. Accordingly, I find that the landlord has established entitlement to the full amount claimed.

\$1,500.00: *unpaid rent / loss of rental income for April 2013*

Section 45 of the Act speaks to **Tenant's notice**, and provides 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 addresses **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.

I find that the tenants did not comply with the above statutory provisions concerning the manner in which a tenant may end a fixed term tenancy. Further, I find that the landlord undertook to mitigate the loss of rental income by advertising for new renters in a timely fashion. In the result, I find that the landlord has established entitlement to the full amount claimed.

\$925.00: *value of carpet replacement in master bedroom*

The landlord claims that the carpet was installed only 6 months prior to the start of this tenancy, and that urine smells emanated from the carpet within days after the tenants had vacated the unit. Removal of the carpet led to the discovery of urine stains. The tenants testified that there were smells from the carpet when their tenancy began and that the previous renters also had pets. The tenants themselves own 2 dogs.

Ultimately, the carpet was not replaced, and the landlord undertook to repair the hardwood floor.

Related to this aspect of the application, attention is drawn to the following particular sections of the Act:

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

In the absence of the comparative results of move-in and move-out condition inspection reports, this aspect of the application is hereby dismissed.

\$200.00: *removal of discarded furniture and other items*

During the hearing the landlord withdrew this aspect of her application.

\$195.00: *replacement value of waders*

While the tenants claim that the waders were returned to a particular closet in the unit, the landlord claims that the waders were nowhere to be found. There is no evidence before me related to the age of the waders or their condition at the time when they were loaned. I find on a balance of probabilities that the landlord has established entitlement limited to **\$30.00**.

\$50.00: *filing fee*

As the landlord has achieved a significant measure of success with the application, I find that she has established entitlement to recovery of the full filing fee.

Sub-total of Landlord's entitlement: \$2,130.00

I order that the landlord retain the tenants' security and pet damage deposits in the combined total amount of **\$1,500.00** (\$750.00 + \$750.00), and I hereby issue a **monetary order** in favour of the landlord for the balance owed of **\$630.00** (\$2,130.00 - \$1,500.00).

Following from the above, the tenants' application is hereby dismissed.

Section 82 of the Act addresses **Review of director's decision or order**, in part:

82(2) The director may conduct a review

(a) based solely on the record of the original dispute resolution proceeding and the written submissions of the parties, if any,

(b) by reconvening the original hearing, or

(c) by holding a new hearing.

(3) Following the review, the director may confirm, vary or set aside the original decision or order.

Following from all of the above, the decision and order dated June 25, 2013 are hereby set aside.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$630.00**. 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: October 10, 2013

Residential Tenancy Branch

