



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, MND, FF

Introduction

This is the Landlords' Application, seeking a monetary award for damage to the rental unit; compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security and pet damage deposits towards their monetary award; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlords served the Tenants with the Notice of Hearing documents and copies of their documentary evidence by registered mail sent to the rental unit on July 24, 2013.

Preliminary Matters

The Tenant CB testified that she was only 17 years old when she signed the lease and therefore was not an adult. She submitted that the Landlord should not have taken action against her.

The Landlord said that she did not advise him that she was a minor and that he assumed she was an adult.

I advised the parties of the provisions of Section 3 of the Act, which states:

Act applies to tenancy agreement with a minor

- 3** A person who has not reached 19 years of age may enter into a tenancy agreement or a service agreement, and the agreement and this Act and the regulations are enforceable by and against the person despite section 19 of the *Infants Act*.

Issues to be Decided

1. Are the Landlords entitled to recover the cost of repairs made to the rental unit?
2. Are the Landlords entitled to compensation for loss of revenue?
3. May the Landlords apply the security and pet damage deposits towards satisfaction of any monetary award given?

Background and Evidence

The rental unit is one of two suites in a house. The Tenants occupied the upper floor. The second suite is the lower floor.

A copy of the tenancy agreement was provided in evidence. On January 12, 2013, the parties entered into a lease with a term of one year, commencing February 1, 2013 and ending January 31, 2014. Rent is \$1,300.00 per month, due on the first day of each month. Rent does not include utilities. The Tenants paid a security deposit in the amount of \$650.00 and a pet damage deposit in the amount of \$650.00 at the beginning of the tenancy. The parties met to complete a Condition Inspection Report on or about August 5, 2013, but did not complete the Report. A copy of the Report was provided in evidence.

On July 1, 2013, the Tenants gave the Landlord notice that the Tenants would be terminating the tenancy effective August 1, 2013. The Landlord testified that he received the notice to end the tenancy in his mail box on July 2, 2013. A copy of the notice to end the tenancy was provided in evidence.

No Condition Inspection Report was completed at the end of the tenancy. The Tenants moved out of the rental unit without providing a forwarding address. During the Hearing, the Tenants gave an address for service.

The Landlord re-rented the rental unit effective September 1, 2013, for \$1,200.00 per month. The Landlord seeks compensation for loss of revenue and administrative costs in re-renting the rental unit.

The Tenants submitted that the rental unit was not a legal suite. They questioned the amount that the Landlords were seeking in administrative costs (\$300.00) and stated that the Landlords provided no proof of any cost incurred.

The Landlord testified that in February, 2013, there was a flood in the rental unit which caused water damage and mould growth in the basement suite below. He stated that the flood was caused by the Tenants improperly disposing of paper towels and tampons

in the toilet. The Landlord stated that there was another flood in May, 2013, which was also caused by the Tenants. The Landlord seeks to recover the cost of the plumber's bill and the cost of repairing the ceiling in the suite below. The Landlord provided photographs and invoices in evidence. The Landlord testified that the downstairs occupants moved out of the rental unit as a result of the Tenants' actions which caused the flood. He seeks compensation for loss of revenue for the downstairs suite.

The Tenants disputed that the flood was not caused by them. They submitted that it was common practice to flush tampons down a toilet and that they did not use paper towels. The Tenants stated that the toilet flooded as a result of a "belly" in the plumbing, which was referred to in an invoice. The Tenants stated that the mould growth could not have happened so quickly and that they suspect it may have been caused by floods that occurred prior to their tenancy.

The Tenants also questioned the validity of the invoices and stated that one of the invoices had contact information scratched out and that another business had closed in 2011.

The Landlord testified that there were two plumbers who had different opinions with respect to the cause of the blockage. He stated that he has not repaired the line to remove the belly.

Analysis

In a claim for damage or loss under the Act, the applicants have the burden of proof to establish their claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenants pay for the loss requires the Landlords to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlords followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Are the Landlords entitled to recover the cost of repairs made to the rental unit?

I find that the Landlords did not provide sufficient evidence to support this portion of their claim. While I accept that the Landlords suffered a loss, I find that there is insufficient proof that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act. The invoice from the plumber who attended on January 30, 2013, indicates in part:

“Removed toilet and camera inspected line. There was a blockage aprox 20’ in. Cabled repeatedly to clear to aprox 45 feet. Camera inspected again and lots of debris and build up in line so hydroscrubbed line to flush out. Camera inspect again and there is a belly in line @ aprox 30’. If backups persist, this belly will need to be located and replaced as it will affect flow in drainage. No leaks, but toilet flushes poorly. “

The Landlord stated that another plumber disagreed with the initial plumber’s findings, but he provided no testimony from the other plumber.

This portion of the Landlords’ claim is dismissed without leave to re-apply.

Are the Landlords entitled to compensation for loss of revenue?

Having found that the Landlords did not provide sufficient evidence that the damage was caused by the Tenants’ neglect, I also dismiss the Landlords’ claim for loss of revenue with respect to the basement suite.

Section 44 of the Act describes the only ways a tenancy can end. Section 45 of the Act provides for the ways a tenant may end a tenancy. In this case, the Tenants signed a fixed term tenancy agreement, which means that the Tenants could end the tenancy under the provisions of Section 45 (b) or (c) only. Section 45 of the Act states,

Tenant's notice

45 (1) A tenant may end a periodic 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, and

(b) 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.

(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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service 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 date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

I find that Section 45(3) of the Act does not apply to this tenancy. Therefore, the Tenants could not legally end the tenancy until a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

I find that the Landlords suffered a loss as the result of the Tenants' breach of the tenancy agreement and the Act, and that the Landlords mitigated their loss by taking reasonable steps to re-rent the rental unit in a timely fashion for \$100.00 less a month. Therefore, I find that the Landlords are entitled to compensation, calculated as follows:

Loss of revenue for August, 2013	\$1,300.00
Loss of revenue @\$100.00 a month for the months of September, October, November, December and January	<u>\$500.00</u>
TOTAL loss of revenue	\$1,800.00

A liquidated damages clause is a clause where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into. There is no liquidated damages clause in the tenancy agreement. Therefore, I dismiss the Landlords' claim for the cost of re-renting the rental unit. I find that the Landlords did not provide evidence of the actual amount required to compensate them for this portion of their claim and it is dismissed without leave to reapply.

The Landlords have been partially successful in their Application for Dispute Resolution and I find that they are entitled to recover **\$50.00** of the cost of the \$100.00 filing fee from the Tenants.

Further to the provisions of Section 72 of the Act, the Landlords may apply the security and pet damage deposits towards their monetary award.

I hereby provide the Landlords with a Monetary Order, calculated as follows:

Loss of revenue	\$1,800.00
Partial recovery of filing fee	<u>\$50.00</u>
Subtotal	\$1,850.00
Less set off of deposits	<u>-\$1,300.00</u>
TOTAL	\$550.00

Conclusion

I hereby provide the Landlords with a Monetary Order in the amount of **\$550.00** for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (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: November 13, 2013

Residential Tenancy Branch