



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenants to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on October 10, 2013. Canada Post tracking numbers were provided by the tenants in sworn testimony. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenants appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The tenants testify that their tenancy started on January 26, 2013. This was a fixed term tenancy which was due to end on July 26, 2013. Rent for this unit was \$1,600.00 per month and was due on the 26th day of each month.

The tenants testify that they gave the landlord written notice to end the tenancy. This was given to the landlord on June 21, 2013. The tenant's vacated the rental unit on July 07, 2013 after the landlord had found a new tenant to move into the unit on July 08, 2013.

The tenants testify that they had confirmed with the new tenant that she did move into the unit on that date and the male tenant also went to the rental unit to reconnect the smoke detector for the new tenant and again was able to confirm that she had in fact moved into the unit. The tenants have provided evidence showing that their BC Hydro account was disconnected on July 07, 2013 as the new tenant's account was activated on that date.

The tenants seek to recover the rent paid for the remainder of July from July 08 to July 26, 2013. The tenants had calculated this at \$1,006.99. But after new calculations were done during the hearing the tenants agree the sum owed is \$51.61 a day for 19 days to a total amount of \$980.64. The tenants have provided evidence of communication between the parties concerning the return of this rent however the landlord has not returned it to the tenants.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the tenants attending the hearing. I refer the parties to the s. 45(2) of the *Act* which states:

(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.

As this tenancy did not legally end until July 26, 2013 then the tenants would owe the landlord any rent up to that date unless the landlord was able to re-rent the unit or any period of time up to and including that date. The tenants have provided evidence to show that they vacated the unit on July 07, 2013 and a new tenant took occupancy on July 08, 2013. Therefore the landlord did not suffer any loss of rent for the balance of the term of the tenancy and must therefore return any rent paid for this period to the tenants.

I have calculated that this amount for the 19 days is **\$980.64**. I therefore Order the landlord to return this amount to the tenants pursuant to s. 67 of the *Act*. The tenants are also entitled to recover the **\$50.00** filing fee paid for their application pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenants' amended monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,030.64**. The Order

must be served on the respondent. Should the respondent fail to comply with the Order the Order may be enforced through the Provincial Court 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: January 03, 2014

Residential Tenancy Branch

