



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Green Oak Development (West 5th) Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order for damage to the rental unit and for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement, and an order entitling the landlord to retain the tenant's security deposit.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

Background and Evidence

The parties agree the landlord purchased the house containing the rental unit from the tenants in the summer of 2013. The parties then entered into a short-term tenancy agreement. The tenants paid a security deposit of \$990.00.

The landlord gave evidence that the parties signed a tenancy agreement for a fixed-term tenancy starting August 1, 2013 and ending September 30, 2013. The landlord's evidence is that the tenants did not initial the box on the tenancy agreement to indicate they would move out at the end of the fixed term. For that reason, the landlord states the parties signed an addendum to the tenancy agreement in which the parties agreed the tenants would move out on September 30, 2013. Neither the written tenancy agreement nor the addendum was put into evidence.

The landlord gave evidence that the tenants vacated the rental unit on October 31, 2013.

The parties agree that the tenants caused a mattress fire in the rental unit on September 15, 2013. The landlord provided a copy of an Incident Report from Vancouver Fire and Rescue Services that indicates the fire department attended and removed the mattress from the building. The landlord's evidence is that the fire resulted in smoke damage and also water damage from the work of the fire department.

The tenant gave evidence that the mattress was on fire for five minutes at most, and then the other tenant put it out with a fire extinguisher. The tenant's evidence is that the fire department doused the mattress with water for "just a second". The parties agree there are no sprinklers in the rental unit.

The landlord gave evidence that the City of Vancouver required him to bring in an electrician to repair any damage to the electrical system that may have been caused by the fire. The landlord provided a copy of the electrician's invoice which includes \$472.50 for work done in the rental unit in November 2013. The landlord also provided a copy of the invoice for \$210.00 for the Vancouver Fire and Rescue Services Incident Report. The landlord also provided an invoice for removal of waste in yard at a cost of \$70.00 and installing new locks at a cost of \$40.00.

The landlord's evidence is that they could not re-rent the rental unit after the tenants moved out because it required full restoration. The landlord's evidence is that they obtained quotes in the range of \$30,000.00 to \$80,000.00 for a full restoration and it is not worth it to them to do a full restoration since they intend to tear the building down for redevelopment. There were no photographs in evidence of the condition of the rental unit either before or after the fire.

The landlord seeks a monetary order to compensate for the loss of rent for November and December 2013 at \$1,980.00 per month on the basis that, if not for the fire, the landlord would have entered into another short-term fixed tenancy agreement with another tenant.

The tenant gave evidence that the rental unit was in poor condition prior to the fire. The tenant's evidence is that they sold the property to the landlords as a "teardown". He said the roof leaked, the back porch supports needed replacing, the rental unit needed painting, and the old tile floors were cracked. The tenant's evidence is that he was told by another representative of the landlord in early September that the landlords had no

intention of renting the unit out again after the tenants moved out. The tenant's position is that the landlords did not suffer a loss of rental income due to the fire.

The tenant gave evidence that the tenants sold the landlord two houses in a row of four that the landlord now owns. The tenant's evidence is that two of the houses are now empty of tenants because the landlord intends to redevelop the site shortly.

The landlord gave evidence that at the time of the hearing there was still a tenant in the other rental unit in the house where the mattress fire occurred. The landlord's evidence is that they would have found another tenant for the rental unit formerly occupied by the tenants in this application.

The tenant agrees that the tenants are responsible for the following losses by the landlord: the \$210.00 cost of the incident report, the \$472.50 cost of the electrician, and the \$70.00 cost for removal from the yard, for a total of \$752.50. The tenant disputes that the tenants are responsible for the installation of new locks, because the keys to the locks were lost before the tenancy commenced.

Analysis

I find that the tenants are responsible for the \$752.50 in losses set out above. I agree with the tenant that the tenants are not responsible for the \$40.00 cost of new locks because the keys to the locks were lost before the tenancy commenced.

At issue is whether the fire caused by the tenants resulted in a loss of two months' rental income for the landlord. Where a landlord seeks such compensation, the burden of proof is on the landlord to show on a balance of probabilities that the tenants are responsible for the claimed loss. In this case, I find there is insufficient evidence to conclude that the brief mattress fire left a previously rentable rental unit in an unrentable condition. The landlord did not provide photographs or detailed evidence about what was different about the rental unit following the mattress fire. I note that the tenants in this application continued to occupy the rental unit for one and a half months after the fire.

For these reasons, I dismiss the landlord's claim for compensation for two months' rent for November and December 2013. The landlord is entitled to recover their RTB filing fee of \$50.00 because they have had some success in their application. The amount due the landlord is therefore \$752.50 in losses and \$50.00 for the filing fee, for a total of \$802.50. The landlord may retain \$802.50 from the tenants' security deposit of \$990.00.

I grant the tenants a monetary order for the remaining balance of their security deposit, which is \$187.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I order that the landlord retain \$802.50 from the tenants' security deposit and return the balance of \$187.50 to the tenants. I grant the tenants a monetary order for \$187.50.

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: March 14, 2014

Residential Tenancy Branch

