



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MNSD, FF
RP, ERP, LRE, MNSD

Introduction

This hearing was scheduled in response to 2 applications: i) by the landlords for a monetary order as compensation for unpaid rent / loss of rental income; retention of the security deposit and pet damage deposit; and recovery of the filing fee; and ii) by the tenants for an order instructing the landlords to make repairs to the unit, site or property; an order instructing the landlords to make emergency repairs for health or safety reasons; an order suspending or setting conditions on the landlords' right to enter the rental unit; and return of the security deposit and pet damage deposit. Both parties attended and gave affirmed testimony.

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

There is no written tenancy agreement in evidence for the fixed term tenancy which the parties agree was from April 01, 2013 to April 30, 2014. Monthly rent of \$1,500.00 was 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.

By letter dated December 06, 2013, a copy of which is not in evidence, the tenants gave notice to end tenancy effective December 15, 2013, and they put a stop payment on the rent cheque for December. Landlord "MWM" testified to his understanding that landlord "MM" began online advertising for new renters after the tenants vacated the unit. Landlord "MWM" also testified that new renters were found effective February 01, 2014.

The tenants claim that in August 2013 they noticed "an ongoing smell of gas in our apartment." They claim that while they notified the landlords "for close to 4 months," the landlords took no action to "fix, replace, or [offer] compensation for the non-functional stove." For the aforementioned reasons, the tenants claim they withheld payment of

rent for December 2013 and ended the fixed term tenancy early. For their part, the landlords claim there was neither a gas leak, nor a faulty stove, and that the new renters have not reported any problems similar to those described by the tenants.

The landlords filed their application for dispute resolution on December 20, 2013. The tenants filed their application for dispute resolution on February 23, 2014.

Analysis

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

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

LANDLORDS

\$1,500.00: *unpaid rent (stop payment on cheque) for December 2013*

Section 26 of the Act addresses **Rules about payment and non-payment of rent**, in part:

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In the absence of any evidence that the tenants were authorized under the Act to withhold payment of rent for December 2013, I find that the landlords have established entitlement to the full amount claimed.

\$1,500.00: *unpaid rent / loss of rental income for January 2014*

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

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 section 45 of the Act by ending tenancy prior to the "date specified in the tenancy agreement as the end of tenancy." However, in the absence of direct testimony from landlord "MM" in relation to the timing and manner of advertising undertaken to mitigate the loss of rental income, I find that the landlords have established entitlement limited to **\$750.00**, or half the amount claimed.

\$50.00: *filing fee*

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

Total entitlement: \$2,300.00 (\$1,500.00 + \$750.00 + \$50.00)

I order that the landlords retain the security deposit and pet damage deposit in the combined total amount of **\$1,500.00** (\$750.00 + \$750.00), and I grant the landlords a **monetary order** for the balance owed of **\$800.00** (\$2,300.00 - \$1,500.00)

TENANTS

\$3,000.00: *compensation related to gas smells & non-functioning stove*

There is no evidence before me that the tenants documented their concerns about an alleged problem with gas and a non-functioning stove, and took them to the landlords' attention at any time during the term of tenancy. Further, there is no documentary evidence before me of an authoritative assessment of the gas and stove, such as may be provided by a suitably qualified service provider or technician. Accordingly, in the absence of sufficient evidence to support this aspect of the claim, it is hereby dismissed.

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

Section 72 of the Act addresses **Director's orders: fees and monetary orders**, in part:

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

The disposition of the security deposit and pet damage deposit has been decided above. In summary, the landlords have established entitlement to retention of the security deposit and pet damage deposit.

ORDERS AGAINST THE LANDLORDS

As the tenancy has now ended, the application for certain orders to be issued against the landlords is hereby dismissed.

Finally, the tenants have not applied to recover the filing fee for their application.

Conclusion

The tenants' application is hereby dismissed.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords in the amount of **\$800.00**. 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: April 24, 2014

Residential Tenancy Branch

