



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss, for authority to retain the tenants' security deposit, and for recovery of the filing fee.

The landlord and the tenant attended the teleconference hearing, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issue regarding the service of the documentary evidence or the application.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to retain the tenants' security deposit, further monetary compensation, and to recover the filing fee?

Background and Evidence

The evidence shows that the parties entered into a fixed term tenancy agreement, beginning on July 1, 2013, and was to run through November 30, 2013. The written tenancy agreement provided that the tenancy ended and the tenants were to vacate at the end of the tenancy. Monthly rent initially was \$1350 and a security deposit of \$650 was paid on June 13, 2013.

The parties entered into another fixed term tenancy, beginning on December 1, 2013, with a fixed term through April 30, 2014, monthly rent was \$1350, and the tenants' security deposit of \$650 was transferred with this new tenancy. Although the parties signed the next tenancy agreement in the first week of October, the signing date shows December 1, 2013.

The landlord submitted that the tenancy ended on December 15 after notice from the tenants, and that the tenants vacated on December 8, 2013.

The landlord's monetary claim is \$3915, comprised of cleaning the rental unit for \$240, liquidated damages of \$300, and loss of rent revenue for \$3375.

In support of his application, the landlord submitted that when he received an email from the tenant on November 15, 2013, that the tenants were vacating on December 15, 2013, he began advertising the rental unit immediately, both on free, online advertising sites and in the local newspaper. The landlord submitted that despite consistent advertising, he was unable to secure new tenants until March 1, 2014 and suffered a loss of rent revenue from December 15, 2013 through February 28, 2014.

The landlord additionally submitted that all efforts were made to re-rent the rental unit, but that the time of year made re-renting difficult.

As to the cleaning claim, the landlord submitted that when he received the tenants' notice that they were vacating, he made travel arrangements from his home in another province in order to conduct a move-out inspection on December 16; however, when he arrived, he learned that the tenants had vacated several hours earlier, according to the landlord.

The landlord said that he began cleaning the next morning and received an email from the tenants to let them know if there were any problems. The landlord submitted that he and the tenant inspected the rental unit on December 17, but that the tenant refused to sign the document.

The landlord submitted that a lot of refuse was left by the tenants as that they failed to provide the most basic cleaning, he hired a cleaning company to clean the rental unit.

The landlord submitted that the tenants were required to leave the rental unit in the same condition as when the tenants began the tenancy.

The landlord submitted that he was entitled to liquidated damages of \$300, pursuant to the clause in the tenancy agreement allowing for such a fee in the event that the tenants ended the tenancy prior to the end of the fixed term.

The landlord's relevant documentary evidence included the first and second written tenancy agreements, the condition inspection report, move-in and move-out, copies of the advertisements, with a billing statement, email communication between the parties, photographs of the rental unit, a statement from a glass company representative about the condition of the windows and moisture, a communication from the next tenants attesting to a lack of moisture or water in the windows, and a written summary.

In response, the tenant acknowledged breaking the fixed term tenancy agreement, but claimed that he had just cause to do so due to the developing mold in the rental unit. In explanation, the tenant submitted that the windows were not sealed and that due to water and moisture created by the windows, dangerous mold developed. The tenant submitted that the mold created health and safety concerns for him and his family, particularly his 2 year old child.

The tenant submitted that on October 20, he sent the landlord an email about his mold concerns and the next day, had a conversation with the landlord, at which time the landlord agreed verbally that he would not hold the tenants to the fixed term lease.

The tenant submitted that the landlord mentioned that he would have a window company replace the windows, but that the glass company only replaced a seal.

As to the cleaning, the tenant agreed that they did not leave the rental unit in the same condition as when the tenancy began, but denied owing the landlord for the amount claimed as the tenants did clean the rental unit, as shown by his photographs.

The tenant questioned the landlord's photographs, saying that they depicted close-up views of crumbs. The tenant submitted that the parties did not inspect under the refrigerator at the beginning of the tenancy and that they did not leave property behind.

The tenant denied owing for the liquidated damages.

The tenant's relevant documentary evidence included a written submission, information about the hazards of toxic, black mold, and photos of the rental unit taken during the walk through with the landlord on December 17.

In response to the tenant's submissions, the landlord stated that there were absolutely no discussions with the tenant agreeing to let them out of the fixed term, that there was never a serious discussion about a mold concern, and that the tenants wanted new windows.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Loss of rent revenue-

As to the issue of unpaid rent, Section 45(2) of the Act states that a tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term.

In the case before me, the tenant argued that he was entitled to end the tenancy early as the landlord breached a material term of the tenancy agreement and that the rental unit was unfit for habitation due to mold. I reject this argument as the tenant has supplied no evidence that there was mold in the rental unit other than surface mold,

which could be cleaned or wiped away. If there had been mold present in the rental unit for which the landlord would be responsible, in other words, structural mold, I would expect an expert's report or at least written complaints to the landlord, which would allow the landlord an opportunity to respond and investigate.

I therefore find that the tenant was responsible to pay monthly rent until the end of the fixed term pursuant to their signed tenancy agreement, subject to the landlord's requirement that he take reasonable measures to minimize his loss.

I find the landlord submitted sufficient oral and documentary evidence that he took reasonable measures to mitigate his loss by immediately advertising the rental unit both online and in the local newspaper and was unable to find a new tenant until March 1, 2014.

I therefore find the landlord has proven his monetary claim of loss of rent revenue for the time period of December 15, 2013, through February 28, 2014, for a total of \$3375.

Cleaning-

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear. The tenant is therefore not responsible to leave the rental unit in the same state of cleanliness as when the tenancy began.

In reviewing the condition inspection report, the photographs supplied by the landlord and the tenant, and the landlord's receipt for cleaning, I find that the rental unit was left reasonably clean by the tenants. For instance, the condition inspection report mentioned floor staining, but was not mentioned in the itemized, cleaning receipt.

I also did not rely on the landlord's photograph of the floor under the refrigerator as there was not a like photograph at the beginning of the tenancy.

I therefore find the tenants complied with their requirements of section 37, and I dismiss the landlord's claim for \$240.

Liquidated damages-

I find the written and signed tenancy agreement required that the tenants pay a liquidated damages fee of \$300 in the event the tenants gave notice to terminate the tenancy agreement and vacated prior to the end of the fixed term. I do not find the

amount is unreasonable and I do not find it is a penalty. Therefore, I find the tenants responsible for paying the liquidated damages fee of \$300 and that the landlord has established a monetary claim in that amount. I grant the landlord a monetary award of \$300.

Filing fee-I allow the landlord recovery of the filing fee of \$50 as I have found merit with his application.

Due to the above, I find the landlord has proven an entitlement to a monetary award in the amount of \$3725, comprised of loss of rent revenue for \$3375, liquidated damages of \$300, and the filing fee of \$50.

Conclusion

The landlord's application has been granted in part and he has been granted a monetary award in the amount of \$3725.

I direct the landlord to retain the tenants' security deposit of \$650 in partial satisfaction of his monetary award of \$3725 and I grant the landlord a final, legally binding monetary order for the balance due in the amount of \$3075, which I have enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenant.

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 19, 2014

Residential Tenancy Branch

