Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This was a cross-application hearing.

The tenants applied requesting return of double the security deposit and to recover the filing fee costs from the landlord.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for loss of rent revenue, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

The tenancy commenced on December 1, 2012; rent was $1,200.00 per month, due on the first day of each month. A $600.00 security deposit was paid. A copy of the tenancy agreement was supplied as evidence.

A move-in condition inspection report was completed.

The landlord has made the following claim:

Loss of November 2013 rent	$1,200.00
November 2013 hydro	98.90
Cleaning cost – 9 hours landlord time	237.50
TOTAL	$1,536.40

The parties agreed that on October 12, 2013 the tenants called the landlord to report they would be vacating at the end of that month. The landlord requested the tenants provide written notice. The tenants then issued an October 12, 2013 written notice that they would vacate on October 31, 2013 and the unit would be available for occupancy on November 1, 2013. A copy of this notice was supplied as evidence. The landlord said she spoke with the male tenant who told her had had confidence in her ability to find a new occupant for November 1, 2013. The landlord said she would do her best to locate new occupants. The tenants disputed this, stating they did not discuss locating new occupants with the landlord.

The landlord said that after hanging up the telephone she immediately went to her computer and placed the unit on a popular web site, requesting the same rent. The unit was also placed on a sign outside of the multi-unit building. The landlord was able to locate new occupants effective December 1, 2013. The landlord said that in mid-month it is often difficult to locate good tenants; that attractive prospects have usually already found a unit for the 1st of the next month. A number of people did view the unit. The landlord said that a lot of people drive by the building and that is how the tenants had found the unit, by seeing the vacancy on the sign outside of the building.

The landlord said that on October 12, 2013 she told the tenants they would meet at 1 p.m. on October 31, 2013 to complete the move-out inspection report. The landlord went to the unit at that time; they did not enter but could see that the tenants had not completed moving. The landlord waited a half hour and then went home and called the tenants. The tenants said they were returning the rental truck and would then go to the house to meet the landlord; so at approximately 4 p.m. the landlord returned to the rental unit expecting to meet the tenants. The truck rental office was located close to the rental unit. The tenants did not arrive.

The move-out condition inspection report supplied as evidence included notations made by the landlord, indicating they called the tenant's at 4:16 p.m. and that they again waited at the unit until 4:37 p.m.; the tenants did not arrive. The landlord then called the tenants again at 5:05 p.m. At this point the tenants said they would bring the keys to the unit and sign the inspection report. The tenants did not offer a time when they would be available.

The landlord said they made themselves available to the tenants and were flexible with a time they could meet; when the tenants did not arrive at 1 p.m. or after the call made setting a 2nd meeting time the landlord left the inspection report in the unit. Later the tenants left the keys in the unit, but did not sign the inspection report as they did not agree with the content.

The tenants said that they did not agree to return to the unit at 4 p.m. as they still had a load of furniture on the rental truck. The tenants testified that when the landlord called them the first time they told the landlord they did not know how long they would be and

that they would call the landlord. The tenants said they would leave the keys at then unit and sign the report.

The landlord and tenants each had a copy of the condition inspection report completed by the landlord on October 31, 2013. The copy supplied as evidence to the Residential Tenancy Branch did not include several of the pages; these were reviewed during the hearing and no discrepancies were raised.

The landlord said that she charged $25.00 per hour for 9 hours of cleaning. Walls in the entry, dining room and master bedroom needed washing. The entire bathroom required complete cleaning. The master bedroom mirrored door was dirty, the shelves had not been washed and the sliding doors in each bedroom needed cleaning. The deck had not been cleaned. The landlord noted that there were cob webs on the ceiling throughout the unit.

The landlord received the tenant's forwarding address as part of a letter dated November 4, 2013; postmarked on November 13, 2013. The tenants sent this letter requesting return of the deposit and mentioned they had left the unit very clean. The tenants said that the advertisement had not appeared on the internet and that a sign advertising the unit was not sufficient. A copy of this letter was supplied as evidence.

A December 12, 2013 letter to the landlord, from the tenants, was submitted as evidence. The tenant's again requested return of the deposit. The landlord applied claiming against the deposit on January 31, 2014.

The landlord submitted a copy of 2 City of Penticton hydro bills for the period November 1 to November 29, 2013 in the sum of $98.90. The landlord has requested compensation as a result of the late notice the tenants gave and the cost of hydro that would not otherwise have occurred.

The tenants responded that they could have remained in the rental unit for the month of November and only issued the notice ending the tenancy on the request of the landlord. The landlord did not tell the tenants they might have to pay November rent.

The male tenant said he did not recall at any point during the October 12, 2013 call being given a time to complete the move-out condition inspection. The female tenant said that when the landlord called her on October 31, 2013 at 5 p.m. she did not agree to a time they could meet as they still had more moving to complete. The tenants confirmed that when the landlord last called them they agreed to leave the keys and sign the inspection report.

The tenant said that they have a janitorial business that the unit was left 'spic and span." She had used q tips to clean mirror tracks. The tenant stated that cob webs were very common; the landlord had acknowledged this at one point as they were all over the exterior of the building. The tenant had swept the deck, but it was fall and the deck was

repeatedly covered with leaves. The tenants disputed the need for cleaning and compensation claimed by the landlord.

The tenants did not expect they would have to pay November 2013 hydro costs; otherwise they would have remained in the unit for that month.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 52 of the Act requires a tenant to end a month-to-month tenancy by giving the landlord a signed and dated notice, which includes the address of the unit and the effective date of the notice. After a request by the landlord the tenants did issue a proper notice ending the tenancy but provided a tenancy end date that was not in compliance with the Act.

Section 45 of the Act requires the tenant to provide notice ending a month-to-month tenancy by giving notice at least the day before the day in the month that rent is due. Therefore, written notice given on October 12, 2014, when rent is due on the 1st day of the month, would have been effective on November 30, 2013. I find, on the balance of probabilities that the landlord did tell the tenants she would attempt to rent the unit. It is not unreasonable to accept that it would have been a challenge to locate a suitable occupant within 2 weeks. I found the landlord's testimony on this point genuine and believable. The landlord had requested the written notice as the unit could not be re-rented unless she had confidence the tenants were in fact vacating and had supplied the proper notice. At this point the tenants would have been aware their vacancy could result in a loss to the landlord.

Therefore, I find that the tenants breached the Act by giving notice for a date that was earlier than that allowed, in accordance with section 45 of the Act. Based on the notice given I find that the tenancy ended effective October 31, 2013; the date the tenants vacated the unit.

The tenant's letter sent to the landlord indicating they did not see the advertisement on-line and that advertising on the sign was insufficient. The landlord did not supply any copies of the advertisements; but I found the landlord's testimony that she immediately listed the unit after hanging up on October 12, 2013 was credible and reliable. Further, the tenants did not dispute the landlord's submission that a number of individuals viewed the unit; which leads me to accept the unit was sufficiently advertised.

Therefore, I find that the landlord is entitled to compensation in the sum of $1,200.00 for the loss of November 2013 rent revenue.

Residential Tenancy Branch policy suggests that the purpose of a claim for damages is to put the person who suffered the loss in the same position as if the contract had been carried out. The loss must be a consequence that the parties, at the time the tenancy agreement was entered into, could reasonably have expected would occur if the contract was breached. As I have determined the tenants ended the tenancy in breach of the Act and, as the tenants were required to pay hydro costs during the tenancy, I find it is reasonable to expect the tenants to compensate the landlord for hydro costs that resulted. If the tenancy had ended in accordance with the legislation the landlord would then have been responsible for any hydro costs that might follow the end of the tenancy.

Therefore, I find that the landlord is entitled to compensation in the sum of $98.90 for the verified hydro costs.

In relation to the condition inspection, I find that the landlord did ask the tenants to meet at 1 pm. on October 31, 2013 and that the tenants failed to attend. I find that the further efforts made by the landlord; by calling the tenants twice within several hours on October 31, 2013, in an attempt to meet, satisfied the requirement of the legislation.

Section 17 of the Residential Tenancy Regulation sets out the requirement of notice given by a landlord for an inspection:

> *(1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.*
>
> *(2) If the tenant is not available at a time offered under subsection (1),*
>
> *(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and*
>
> *(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.*
>
> *(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.*

I find, on the balance of probabilities, that on October 12, 2013 the landlord offered the tenants an initial opportunity to complete the inspection on October 31, 2013 at 1 p.m. The landlord went to the unit expecting to meet the tenants, but they did not attend. The landlord called the tenants, arranged to meet them and again the tenants did not

attend. I have accepted the landlord's testimony as having more weight, as there is no reason the landlord would have returned to the unit if they had not made arrangements to meet the tenants.

The tenants did not propose an alternate time to meet the landlord. I can see no reason why the tenants did not offer to meet the landlord once their move was completed that evening. In fact the tenants did return to the unit to leave the keys and could have proposed they complete the report at that time. I find that the landlord made sufficient efforts to complete the report at 1 p.m. and 4 p.m. and that when the tenants failed to suggest another time for the inspection, section 36 of the Act determines that the tenants extinguished their right to return of the deposit.

Residential Tenancy Branch policy suggests that in cases where the tenant's right to the return of a security deposit has been extinguished under section 24 or section 36 of the Act, and the landlord has made a monetary claim against the tenant, the security deposit and will be set off against any amount awarded to the landlord. In this situation, while the right to the return of the deposit has been extinguished, the deposit itself remains available for other lawful purposes under the Act.

In relation to the claim for cleaning I find, from the evidence before me that the landlord is entitled to cleaning costs for 4.5 hours. Outside of the inspection report there was no other evidence before me that supported cleaning over a period of 9 hours. A tenant is required to leave a rental unit reasonably clean and, from the items indicated on the inspection report that required cleaning I find that 4.5 hours would have been sufficient to bring the unit to a reasonably clean state.

	Claimed	Accepted
Loss of November 2013 rent	$1,200.00	$1,200.00
November 2013 hydro	98.90	98.90
Cleaning cost – 9 hours landlord time	237.50	118.75
TOTAL	$1,536.40	$1,417.65

I find that the landlord's application has merit and that the landlord is entitled to recover the $50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of $600.00**,** in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of $867.65**.** In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The tenant's application is dismissed.

Conclusion

The landlord is entitled to compensation for loss of rent revenue and damages as set out above. A monetary Order has been issued.

A portion of the cleaning costs are dismissed.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

The tenant's application is dismissed.

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: May 02, 2014

Residential Tenancy Branch