



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNR, MNDC, FF

Introduction

This hearing dealt with the landlords' application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlords applied for a monetary order for money owed or compensation for damage or loss, unpaid rent and alleged damage to the rental unit, for authority to retain the tenants' security deposit, and for recovery of the filing fee.

The landlord SM attended; the tenants did not attend the telephone conference call hearing.

The landlord supplied evidence that she served each tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on January 21, 2014. The landlords supplied the registered mail receipts showing the tracking number of the registered mail.

Based upon the submissions of the landlord, I find the tenants were served notice of this hearing in a manner complying with section 89(1) of the Residential Tenancy Act and the hearing proceeded in the tenants' absence.

The landlord was provided the opportunity to present her 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 landlord provided evidence that this 11 ½ month fixed term tenancy began on August 15, 2013, was set to run through August 1, 2014, per the tenancy agreement, that the tenancy actually ended on October 14, 2013, when the tenants vacated the rental unit, and the tenants' monthly rent was \$1350. The tenants paid a security deposit of \$675 at the beginning of the tenancy.

The landlords' monetary claim is as follows:

October 2013 unpaid rent	\$1350
Rent difference for balance of fixed term	\$450
Loss of rent revenue for part of Nov. 2013	\$630
New lock	\$50
Strata fine	\$50
Cleaning	\$100
Carpet cleaning	\$100
Lost building key	\$100
TOTAL	\$2830

As to the landlords' documentary evidence, the landlord submitted that she served each tenant with her documentary evidence on April 17, 2014, and supplied the tracking number of the registered mail envelopes.

The landlord's relevant documentary evidence included the tenancy agreement and addendums, strata tenant information sheet, a Form K, a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued to the tenants, a notice of a final opportunity to inspect, the condition inspection report, a bylaw infraction notice to the landlords, a receipt for a key replacement, and email communication between the parties.

The landlord's relevant oral evidence included:

October rent-The landlord stated the tenants failed to pay their rent for October, which caused the landlords to issue the tenants a 10 Day Notice to End Tenancy for Unpaid

Rent or Utilities. The tenants vacated the rental unit on October 14, 2013, without paying the rent.

Loss of rent revenue; rent difference for balance of fixed term-The landlord submitted that they began advertising the rental unit immediately when they knew the tenants were moving out; however, after a week of advertising the rental unit for monthly rent of \$1350, with no interest, she dropped the monthly rent asking price to \$1300 and were able to secure new tenants beginning November 15, 2013.

The landlord submitted that they were entitled to the difference in rent for the balance of the fixed term as well as for loss of rent revenue for November as the tenants violated their fixed term agreement by vacating early.

Lock change; building lock-The landlord submitted that they were forced to change the locks to the rental unit as the tenants made multiple copies of the keys and they were not certain if the tenants returned all copies. Additionally, the landlord submitted that the tenants failed to return the key to the common area for the residential property.

Strata fine-The landlord submitted that they incurred a strata fine due to the tenants' failure to give proper notice of their moving out, which in turn meant the landlords could not make the arrangements with the strata corporation.

Cleaning; carpet cleaning-The landlords submitted that the tenants failed to attend the move-out inspection, despite being given proper notice to attend, as shown by her evidence. The landlord further submitted that the tenants vacated the rental unit without properly cleaning and therefore they were forced to clean the rental unit as well as the carpet. Some items of concern and which required cleaning were cat litter and cat spray on the walls.

The landlord submitted that although there was no receipt for the cleaning, she did pay this amount. As to the carpet cleaning, the landlord submitted that they rented a carpet cleaning machine and took time off work.

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.

October 2013- Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

In the case before me, the undisputed evidence of the landlord shows that the tenants were obligated to pay rent on October 1, 2013, according to the terms of the tenancy agreement and failed to do so.

I therefore find the landlords are entitled to a monetary award of \$1350 for unpaid rent for October 2013.

*Loss of rent revenue-*Section 45(2) of the Act states that the 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, I find the tenants provided the landlords notice earlier than the end of the fixed term and thus were responsible to pay monthly rent to the landlord until the end of the fixed term, here August 1, 2014, subject to the landlords' requirement that they take reasonable measures to minimize their loss.

I find the landlord submitted sufficient undisputed evidence that they mitigated their loss by making reasonable efforts to re-rent the rental unit at a reasonably economic rent, and were unable to find a new tenant until November 15, 2013.

I therefore approve the landlords' claim for loss of rent revenue for November 1-14, @ \$45 per day, in the amount of \$630.

Rent difference for balance of fixed term- Residential Tenancy Policy Guideline #3 states that, as to damages, a landlord may be compensated for the difference between what they would have received from the defaulting tenant and what they were able to re-rent the premises for the balance of the un-expired term of the tenancy.

I therefore find the landlords have proven their claim for loss of rent revenue for the balance of the tenancy agreement in the amount of \$450 (\$50 for 9 months, November 2013 through August 1, 2014).

Cleaning; carpet cleaning- I find the condition of the rental unit at the end of the tenancy was not reasonably clean as required by section 37(2)(a) of the Act and I find the landlord submitted sufficient undisputed evidence that due to the actions or neglect of the tenants, the rental unit required cleaning and carpet cleaning.

I therefore find the landlords are entitled to a monetary award of \$100 for cleaning and \$100 for carpet cleaning.

*Strata fine-*In this case the landlords had the tenants sign a Form K-Notice of Tenant's Responsibility with the tenancy agreement, which is a written acknowledgement that the tenants, renting within a strata development, have received a copy of the strata bylaws and agree to abide by them.

With the form being signed by the tenants, the rules or bylaws become part of the tenancy agreement, and consequently, the tenants are obligated to abide by the bylaws or pay the fines, as these issues are consequently not considered outside the jurisdiction of the Residential Tenancy Act.

I therefore find the landlords are entitled to the fine of \$50 assessed to their account by the strata corporation due to the actions of the tenants.

*Key replacement-*I find the landlords submitted sufficient undisputed evidence that the tenants did not demonstrate that they returned all copies of the keys to the rental unit or to the key to the residential property as required by section 37(2)(b) of the Act and I therefore approve the landlord's claim of \$150 in total for key replacements.

I grant the landlord recovery of the filing fee due to their successful application.

Due to the above, I grant the landlords' application and find they are entitled to a total monetary award of \$2880, comprised of unpaid rent for October 2013 of \$1350, loss of rent revenue for November 1-14, 2013, in the amount of \$630, rent difference for

balance of the fixed term in the amount of \$450, strata fine of \$50, key replacements for \$150, cleaning and carpet cleaning of \$200, and the filing fee of \$50.

Conclusion

I have granted the landlords' application for dispute resolution and awarded them monetary compensation in the amount of \$2880.

At the landlords' request, I allow them to retain the tenants' security deposit of \$675, **in partial satisfaction of their monetary award.**

I therefore grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$2205, which I have enclosed with the landlords' 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 may be recovered from the tenants.

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* and is being mailed to both the applicants and the respondents.

Dated: May 16, 2014

Residential Tenancy Branch

