



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on January 30, 2014. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Are there other losses or damages and is the Landlord entitled to compensation?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

The Tenants move into the rental unit early on December 25, 2013 and the tenancy agreement started on January 1, 2014 as a month to month tenancy. Rent was \$800.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$400.00 on December 12, 2013. The Tenant said they moved out of the rental unit on January 12, 2014. A move in condition inspection report was completed on January 1, 2014 and a move out condition report was completed on January 12, 2014.

The Landlord said that the Tenant did not give him proper written notice to end the tenancy therefore he is applying for lost rental income of \$800.00 for February, 2014. The Landlord said he read an email on January 1, 2014 that was dated December 31, 2013, that the Tenants were giving notice that they were ending the tenancy on January

30, 2014. The Landlord said he told the Tenants that they need to give him written notice to end the tenancy and emails are not proper written notice. The Landlord said the Tenants gave him written notice to end the tenancy on January 1, 2014 to end the tenancy on January 30, 2014. The Landlord continued to say that this is not proper written notice for the end of January, 2014, because notice given in January, 2014 is for the end of February, 2014. As a result the Landlord said the Tenants are responsible for his lost rental income for February, 2014. In addition the Landlord said he advertised the rental unit throughout January and February, 2014 and he submitted copies of the advertisements. The Landlord started to advertise the property on January 1, 2014. The Landlord said he rented the unit to new tenants on March 1, 2014.

The Landlord continued to say that he included hydro costs in his application, but as he was unable to find out the exact amounts of the hydro expenses he is withdrawing that part of his application. The Landlord said he is applying for \$800.00 of lost rental income for February, 2014, the \$50.00 filing fee and to retain the Tenants' security deposit of \$400.00 as partial payment of the lost rental income.

The Tenants said that after they moved in to the rental unit they discover the water was not what they expected as it was discoloured and the rental unit was not what they thought it would be. As a result the Tenant said they gave the Landlord verbal notice on December 29, 2013 that they were ending the tenancy on January 30, 2014. The Tenants said they also gave notice to the Landlord on December 31, 2013 by email and they gave written notice to the Landlord on January 1, 2014 they were ending the tenancy January 30, 2014. The Tenants said they understand that their written notice was late to be proper notice for January 30, 2014, but they said the Landlord was aware they were ending the tenancy as early as December 29, 2013. The Landlord said the Tenant did not give him verbal notice on December 29, 2013.

The Tenants continued to say they ended the tenancy because the rental unit was in poor condition and the Landlord made unannounced visits to the rental unit many time. The male Tenant said the Landlord came to the rental unit 10 times in the 17 days they were in the unit.

In closing the Tenants both said they believe the Landlord was given 30 days notice and they do not owe the Landlord anything.

The Landlord said in closing that the Act says a tenant must give 30 days notice in writing to end a tenancy and it is based on the rent payment date. As well the Landlord said he tried to minimize his loss by advertising and trying to rent the unit as soon as possible.

Analysis

Section 26 says 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.

Section 45 of the Act says a Tenant may end a period tenancy not earlier than at least one month prior to the date that rent is payable or with the agreement of the Landlord. The notice to end the tenancy must be in writing. In this situation it means that a notice to end a tenancy given on any day in January, 2014 is effective for February 28, 2014, based on the rent payment date of the 1st of each month.

As both parties agreed written notice to end the tenancy was given to the Landlord on January 1, 2014, the Tenants did not give the Landlord proper notice to end the tenancy on January 30, 2014. The Act indicates that the effective vacancy date for a notice given January 1, 2014 is for February 28, 2014. The Tenants do not have the right under the Act to withhold part or all of the rent; therefore I find the Tenants are responsible for the rent of \$800.00 for February, 2014 due to improper notice to end the tenancy.

As the Landlord has been partially successful in this matter, he is also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit in partial payment of the lost rental income. The Landlord will receive a monetary order for the balance owing as following:

	Lost rental income:	\$	800.00	
	Recover filing fee	\$	50.00	
	Subtotal:			\$ 850.00
Less:	Security Deposit	\$	400.00	
	Subtotal:			\$ 400.00
	Balance Owing			\$ 450.00

Conclusion

A Monetary Order in the amount of \$450.00 has been issued to the Landlord. A copy of the Order must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 14, 2014

Residential Tenancy Branch

