



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND; MNSD; MNDC; MNR; FF

Introduction

This is the Landlord's application for a Monetary Order for damages and unpaid rent; for compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlord served the Tenants TJ and KM with the Notice of Hearing documents by registered mail, sent March 26, 2014, and the Tenant PS by personal service on March 25, 2014. It was also determined that the parties exchanged their documentary evidence.

Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent, unpaid utilities, loss of revenue, and the cost of cleaning and repairing the rental unit?

Background and Evidence

This tenancy began on July 1, 2013. The tenancy agreement was a one year lease, ending June 30, 2014. Monthly rent was \$1,350.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$675.00 and a pet damage deposit in the amount of \$675.00 at the beginning of the tenancy.

The Tenants moved out on or about March 10, 2014. A move out Condition Inspection Report was completed on March 10, 2014, a copy of which was provided in evidence. The Landlord and the Tenants TJ and DS were present at the move out inspection. The Tenants signed the section of the report indicating that they agreed that the Landlord could retain \$137.50 from the security deposit for damages to the rental unit. The Tenants gave a forwarding address on the Condition Inspection Report. The Landlord filed his application against the security deposit and pet damage deposit on March 24, 2014.

The Landlord stated that the rental unit was re-rented June 1, 2014, and therefore he no longer seeks loss of revenue for the month of June, 2014. The Landlord's monetary claim is as follows:

Unpaid rent for March, 2014	\$1,350.00
Loss of revenue for April and May, 2014	\$2,700.00
Unpaid water bill	\$157.60
Cleaning and repairs	<u>\$162.50</u>
TOTAL monetary claim	\$4,370.10

The Landlord gave the following relevant testimony:

The Landlord testified that the Tenants did not give due notice to end the tenancy. He stated that the only communications he had with the Tenants regarding the end of tenancy was by e-mail and therefore it was not a valid notice to end the tenancy. In addition, the Landlord submitted that the tenancy agreement was a lease, and therefore it could not end before the end of the term, June 30, 2014.

The Landlord stated that the Tenants e-mailed him on February 18 and 20, 2014, telling him, "because of mice, we are ending the tenancy". The Landlord stated that the Tenants moved out on March 10, 2014, and that they did not pay rent for the month of March, 2014.

The Landlord testified that he works overseas and therefore he gave the Tenants his brother's phone number in case issues arose during the tenancy. The Landlord testified that on February 26, 2014, the Tenants informed his brother that they would end the tenancy by March 10, 2014, if the mouse issue was not resolved.

The Landlord stated that he told his brother to deliver an electronic mouse deterrent to the Tenants. He stated that his brother delivered the device to the Tenants right away, but they did not use it. The Landlord testified that he covered holes in the walls and did work at the rental unit within 24 hours of being notified that work was required. The Landlord disputed that the Tenants caught as many mice as they allege they caught.

The Landlord acknowledged that most communications between him and the Tenants took place by e-mail. He stated that he often did not see e-mails for a couple of days after they were sent, but that the Tenants had his brother's (his agent's) phone number and could contact him directly in the case of emergencies.

The Tenants gave the following relevant testimony:

The Tenants stated that they contacted the Landlord's agent several times about the

mice and that they told his agent that the rental unit was “unlivable”. The Tenants testified that they first notified the Landlord’s agent about the mice on December 10, 2013, and asked permission to hire an exterminator. The Tenants testified that the Landlord’s agent told them he could not give permission to hire an exterminator because he “had no authority” to do so.

The Tenants testified that they purchased their own mice traps and that well over 20 mice were caught. The Tenants stated that holes in the walls were covered, but only with cardboard. The Tenants testified that the Landlord placed moth balls around the house and that their clothes smelled and their toothbrushes tasted of moth balls. The Tenants submitted that the Landlord’s evidence was that there were 300 people who came to see the rental unit, and that it was not rented sooner because it smelled of moth balls.

The Tenants stated that they thoroughly cleaned the rental unit and therefore they dispute the Landlord’s claim for \$25.00 for the cost of cleaning.

The Tenants stated that they became used to picking up dead mice every day and that they had to throw out food because there were mice feces in the kitchen cupboards.

Analysis

This is the Landlord’s application and therefore the onus is on the Landlord to provide sufficient evidence to prove his claim, on the balance of probabilities.

Section 45 of the Act provides the ways that a tenant can end a tenancy. In this case, the Tenants rely on Section 45(3) of the Act. Section 45 of the Act provides:

Tenant's notice

45 (1) A tenant may end a periodic 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, and

(b) 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.

(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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52[form and content of notice to end tenancy].

(my emphasis added)

Section 52 of the Act provides:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy **must be in writing and must**

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

(my emphasis added)

Both parties testified that their communications were normally done through e-mails; however, Section 52 of the Act requires that, in order to be effective, a notice to end tenancy **must** be in writing and **must** be signed by the party giving the notice. The Tenants' options would have been to provide the Landlord's agent with a notice to end the tenancy that complied with the requirements of Section 52, or perhaps to attach a copy of a document that complied with Section 52 to an e-mail and send it to the Landlord. The Tenants provided a copy of the e-mail that they sent the Landlord and I find that it is not a valid notice to end the tenancy because it is not signed by the Tenants and the e-mail does not clearly state the grounds for ending the tenancy or provide the address of the rental unit.

The Tenants did not pay any rent for the month of March, and I have found that they did not end the tenancy in accordance with the provisions of Section 44(3) of the Act. Therefore, I find that the Landlord is entitled to unpaid rent for the entire month of March, 2014.

The Landlord is required, under the provisions of Section 7 of the Act, to minimize or mitigate his loss of revenue. I find that the Landlord did not provide sufficient evidence that he mitigated his loss. I accept the Tenants' evidence, supported by e-mails and photographs, that the rental unit was infested with mice and that the Landlord did not take reasonable steps to get rid of the mice in a timely fashion. The help of a professional exterminator was warranted, but the Landlord did not hire one. Instead, he gave the Tenants an electronic device and placed moth balls around the rental unit. I accept the Tenants' testimony that potential tenants might find the aroma of moth balls to be objectionable. I dismiss the Landlord's claim for loss of revenue for the months of April and May, 2014.

I allow the Landlord's claim for unpaid utilities in the amount of \$157.50, as supported by his documentary evidence.

I allow the Landlord's claim for repairs in the amount of \$137.50, as agreed by the Tenants. I dismiss the Landlord's claim for cleaning costs of \$25.00, as I find they are not sufficiently proven.

The Landlord has been partially successful in his application and I find that he is entitled to partial recovery of the filing fee, in the amount of \$50.00.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit and the pet damage deposit in partial satisfaction of his monetary award.

I hereby provide the Landlord with a Monetary Order, calculated as follows:

Unpaid rent for the month of March, 2014	\$1,350.00
Unpaid water bill	\$157.60
Repairs	\$137.50
Partial recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,695.10
Less security and pet damage deposits	\$1,350.00
TOTAL DUE TO THE LANDLORD AFTER SET OFF	\$344.90

Conclusion

I hereby provide the Landlord with a Monetary Order in the amount of **\$344.90** for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: July 29, 2014

Residential Tenancy Branch

