



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF
 MNSD

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed on June 19, 2014, to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to keep all or part of the security deposit; and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed on April 24, 2014, to obtain a Monetary Order for the return of double their security deposit.

The Tenants were represented by their Agent, who affirmed that she was at the hearing to represent both Tenants. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa.

The parties appeared at the scheduled teleconference hearing and gave affirmed testimony. The Agent could not confirm if the Tenants had received the Landlord's evidence. The Landlord testified that his evidence was sent to each Landlord on July 29, 2014, by registered mail and he provided the Canada Post tracking numbers in his oral submission. Based on the submissions of the Landlord I find that each Tenant is deemed served with the Landlord's evidence on August 3, 2014, five days after they were mailed, pursuant to section 90 of the Act.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to a monetary award for loss of rent?
2. Have the Tenants proven entitlement to the return of double their security deposit?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on April 1, 2013 and was scheduled to end on April 1, 2014. The Tenants were required to pay rent of \$1,000.00 on the first of each month and on April 1, 2013 the Tenants paid \$500.00 as the security deposit. No forwarding address was provided to the Landlord until the Tenants served the Landlord with a copy of their Application for Dispute Resolution.

The Landlord testified that the Tenants told him sometime in October 2013 that they wanted to vacate the rental unit. He stated that he told them that they had signed a lease until April 1, 2014. The Landlord argued that he had informed the Tenants at the beginning of their tenancy how he must apply to his building management each time he wants to rent the unit to ensure they understood they were signing a fixed term lease. He said he reminded them of this discussion and told them his concern that if they leave early he may not be allowed to re-rent the unit right away. The Tenants ignored him and vacated the unit by November 29, 2013.

The Landlord pointed to the email communications provided in his evidence that confirm he contacted his building management on November 16, 2014 to make his application for approval to re-rent his unit. He argued that he did not receive approval to re-rent the unit until January 2014. He continued to advertise the unit and dropped the rent on two separate occasions from \$1,000.00 to \$875.00 and again to \$850.00. The Landlord submitted evidence that he had kept the unit advertised on the internet and he had posted notices in various public areas listing the unit for rent.

The Landlord stated that when he was not able to re-rent the unit he had to list it for sale in February 2014, due to financial reasons. He continued to advertise the unit for rent while attempting to sell it. An offer was accepted on April 1, 2014 and title was transferred on April 25, 2014. He is now claiming for the loss of rent for four months (December 2013, January 2014, February 2014, and March 2014) of \$4,000.00.

The Agent testified that the Tenants sent the Landlord their notice to end tenancy by email and by registered mail in October 2013 to end the tenancy effective December 1, 2013. The Agent confirmed that no other notice was sent to the Landlord to indicate the Tenants would be vacating the unit early. She met with the Landlord on November 29, 2013, and returned the keys for the unit.

The Agent argued that the Tenants were allowed to end their lease early because the Tenants could not afford to pay the rent and the Landlord refused to negotiate to reduce the rent.

The Agent confirmed that the Tenants did not provide the Landlord with a forwarding address prior to making their claim for double the security deposit. She stated that they were of the opinion that they would get double the security deposit because it was not returned within 15 days from when they moved out of the unit.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

45(2) of the Act stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and 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.

In this case the Tenants provided one month written notice to end their tenancy. However, the Tenants ended the tenancy December 1, 2013, four months prior to the end of the fixed term which was April 1, 2014; which I find to be in breach of section 45(2) of the Act, as listed above.

I accept the Landlord's submissions that he did what was reasonable to mitigate his loss by attempting to re-rent the unit and by lowering the rent on two separate occasions. Accordingly, I find the Landlord has met the burden of proof to establish his claim for loss of rent and I award him compensation equal to four month's rent of **\$4,000.00** (4 x \$1,000.00).

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

The Tenants have applied for the return of double their security deposit; however the undisputed evidence is that the Tenants did not provide the Landlord a forwarding address in writing, prior to applying for dispute resolution, as required by section 38 of the Act.

Therefore, it is my finding that, at the time that the Tenants applied for dispute resolution, the Landlord was under no obligation to return the security deposit. Accordingly, I dismiss the Tenants' application.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Loss of Rent (Dec 1, 2013 to Apr 1, 2014)	\$4,000.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$4,050.00
LESS: Security Deposit \$500.00 + Interest 0.00	<u>-500.00</u>
Offset amount due to the Landlord	<u>\$3,550.00</u>

Conclusion

The Landlord has been awarded a Monetary Order for **\$3,550.00**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I HEREBY DISMISS the Tenants' application, without leave to reapply.

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: August 14, 2014

Residential Tenancy Branch

