



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes: MNR, MNDC, MNSD, FF
MNDC, FF

Introduction

This hearing concerns 2 applications: i) by the landlords for a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; and ii) by the tenants for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee.

In response to applications by both parties, a hearing was originally scheduled for May 12, 2014. The landlords attended, while the tenants did not. By decision dated May 12, 2014, the tenants' application was dismissed without leave to reapply, and a monetary order was issued in favour of the landlords in the amount of \$7,100.00. Subsequently, the tenants applied for review consideration, and by way of review consideration decision dated June 12, 2014, the tenants' application was allowed. Further, pursuant to the review consideration decision, the original decision and order dated May 12, 2014 were suspended "pending the outcome of the review." Both parties attended this review hearing scheduled for August 18, 2014 and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the fixed term of tenancy was from September 13, 2013 to March 31, 2014. The tenancy agreement provides that at the end of the fixed term the tenants "must move out of the residential unit." Monthly rent of \$3,500.00 is due and payable in advance on the first day of each month, and a security deposit of \$1,750.00 was collected. By way of an addendum to the tenancy agreement, clause # 23 provides for the assessment of "liquidated damages" in the amount of \$1,750.00 in the event of the tenants' "early termination" of the fixed term.

By letter dated January 21, 2014, the tenants gave notice of their intent to end tenancy effective February 01, 2014. In support of their decision to end the fixed term of tenancy early, the tenants claim there were a number of deficiencies with the unit, in addition to various disturbances which led to a breach of their right to quiet enjoyment. Ultimately, the tenants vacated the unit on January 31, 2014.

The landlords take the position that they attended diligently to any problems at the house which were identified by the tenants. Further, the landlords claim that the tenants' principal reason for ending tenancy early was their desire to move into a house they had purchased.

The landlords testified that despite online advertising for new renters and a reduction of \$500.00 in the monthly rent, they were unable to find new renters for the remaining 2 months of the fixed term (February and March 2014). The landlords testified that they did not seek new renters for any period of time after March 31, 2014 as their intention is to demolish the subject house and rebuild on the site.

The parties had a brief discussion during the hearing around whether the dispute might be settled, however, this discussion did not lead to a mutually agreeable resolution.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 28 of the Act addresses **Protection of tenant's right to quiet enjoyment**, in part:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(b) freedom from unreasonable disturbance;

Section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**, in part:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 45 of the Act speaks to **Tenant's notice**, in part as follows:

45(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 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.

Section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement**:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Based on the documentary evidence and testimony of the parties, the various aspects of the respective applications and my related findings are set out below.

TENANTS

\$1,467.74: *reimbursement of pro-rated rent paid for September 2013*
\$14,000.00: *(4 x \$3,500.00) reimbursement of full rent paid for October, November,
December 2013 & January 2014*

The move-in condition inspection report in evidence bears no signatures, and neither is there any evidence of a completed "Notice of Final Opportunity to Schedule a Condition Inspection." In short, I find insufficient evidence that the landlords fully undertook to ensure that the inspection and report were completed with the participation of both parties. Further to the foregoing, in view of the landlords' plans to demolish the unit and rebuild on the property, I find on a balance of probabilities that there were miscellaneous deficiencies / disturbances at the unit during the tenancy.

However, I also find on a balance of probabilities that the tenants' decision to end tenancy early, reflects a desire to expedite the move to a house they themselves own.

In summary, I find that the tenants have established entitlement to reimbursement of rent in the limited amount of **\$875.00**, or 25% of 1 full month's rent (\$3,500.00 x 25%). I find that this amount reflects a limited breach of the right to quiet enjoyment, and a diminished value of the tenancy.

\$1,400.00: *move out costs*

The tenants claim that the unit and the tenancy fell short of meeting their expectations, and they have been awarded limited compensation in this regard, as above. However, I find there is insufficient evidence of entitlement under the Act for reimbursement of costs incurred for moving from the unit, and this aspect of the application is dismissed.

\$1,750.00: *repayment of security deposit*

The final disposition of the security deposit is addressed below.

\$211.68: *cost of 3 voice / video recordings*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the tenants' application is dismissed.

\$89.25: cost of plumbing analysis

I find that this analysis was undertaken at the tenants' initiative without consultation with the landlords. I further find that the results of the analysis are insufficient to support a decision to end tenancy early. Accordingly, this aspect of the application is dismissed.

\$100.00: filing fee

As the tenants have achieved nominal success with their application, I find that they have established entitlement to recovery of **\$50.00**, or half the filing fee.

Entitlement: \$925.00 (\$875.00 + \$50.00).

LANDLORDS

***\$3,500.00:** unpaid rent / loss of rental income for February 2014*

I find that notice by the tenants to end the fixed term tenancy does not comply with the above statutory provisions. I further find that the landlords undertook to mitigate the loss of rental income by advertising for new renters in a timely fashion. In the result, I find that the landlords have established entitlement to the full amount claimed.

***\$3,500.00:** unpaid rent / loss of rental income for March 2014*

For reasons identical to those set out immediately above, I find that the landlords have established entitlement to the full amount claimed.

***\$1,750.00:** liquidated damages*

Pursuant to the addendum (clause # 23) to the written tenancy agreement which was signed by both parties, as the tenants ended the fixed term of tenancy prior to the date shown on the tenancy agreement as the end of the fixed term, I find that the landlords have established entitlement to liquidated damages in the full amount claimed.

***\$100.00:** filing fee*

As the landlords have largely succeeded with their application, I find that they have established entitlement to recovery of the full filing fee.

Sub-Total Entitlement: \$8,850.00 (\$3,500.00 + \$3,500.00 + \$1,750.00 + \$100.00)

Offsetting the respective entitlements, I find that the landlords have established a claim of **\$7,925.00** (\$8,850.00 - \$925.00)

As earlier noted, section 72 of the Act speaks to **Director's orders: fees and monetary orders**, and provides in part as follows:

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

I order that the landlords retain the security deposit of **\$1,750.00**, and I grant the landlords a **monetary order** for the net balance of **\$6,175.00** (\$7,925.00 - \$1,750.00).

Section 82 of the Act speaks to **Review of director's decision or order**, in part:

82(2) The director may conduct a review

(c) by holding a new hearing.

(3) Following the review, the director may confirm, vary or set aside the original decision or order.

Following from the above, the decision / order dated May 12, 2014 are hereby set aside.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords in the amount of **\$6,175.00**. Should it be necessary, this order may be served on the tenants, filed in the Small Claims Court 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: August 29, 2014

Residential Tenancy Branch

