



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

This hearing concerns 2 applications: i) by the landlords for a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / 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 / return of the security deposit / and recovery of the filing fee. Both parties attended 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 month-to-month tenancy began on March 15, 2014. Monthly rent of \$1,100.00 is due and payable in advance on the first day of each month, and a security deposit of \$550.00 was collected. A move-in condition inspection report was not completed.

The tenants vacated the unit on or about April 28, 2014, without providing any notice to the landlords. A forwarding address was provided in writing within the next day or two. A move-out condition inspection report was not completed.

The tenants claim their decision to vacate the unit arose from their determination that there was a problem with mold at the unit. They further claim that the mold was having a negative impact on their health, but particularly on the health of tenant "OB." The landlords dispute the existence of any mold in the unit.

The landlords testified that rent was paid only to the end of March 2014, whereas the tenants claim rent was paid to the end of April 2014. The landlords testified that

advertising for new renters was undertaken by way of posting notices in certain places. There was no newspaper or online advertising undertaken. Ultimately, as a result of contacts with friends, the landlords found a new renter effective from June 01, 2014.

The tenants filed their application for dispute resolution on April 28, 2014. The landlords filed their application for dispute resolution on May 05, 2014.

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

The attention of the parties is drawn to the following particular sections of the Act:

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

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

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

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

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.

Section 7 of the Act speaks to **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.

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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Based on the testimony and the documentary evidence, which includes but is not limited to, receipts, photographs, and utilities invoices, the various aspects of the respective claims and my findings around each are set out below.

LANDLORDS

\$1,100.00: *unpaid rent for April 2014*

Related documentation is scarce, and testimony provided by the parties is conflicting. On a balance of probabilities, on this matter I prefer the landlords' testimony and I find that rent was paid only to the end of March 2014. In the result, I find that the landlord has established entitlement to the full amount of unpaid rent claimed for April 2014.

\$1,100.00: *loss of rental income for May 2014*

I find that notice to end tenancy was not given by the tenants before they vacated the unit toward the end of April 2014. While the landlord appears to have attempted to mitigate the loss of rental income by posting notices in search of new renters, I find that the range and scope of efforts to advertise were very limited. Accordingly, I find that the landlord has established entitlement limited to **\$550.00**, or ½ month's rent.

\$945.00: *cost of repairs*

This was a tenancy lasting only about 1 ½ months, and in the absence of the comparative results of move-in and move-out condition inspection reports, this aspect of the application must be dismissed.

\$145.00: *cost of carpet removed from the unit by the tenants*

The parties do not dispute that the carpet was purchased by the landlords and provided to the tenants near the start of tenancy. While the landlords claim the carpet was nowhere to be found after the tenants vacated the unit, the tenants claim they did not remove it. Again, in the absence of the comparative results of move-in and move-out condition inspection reports or any other more conclusive evidence, I find that the landlords have failed to meet the burden of proving that the carpet was removed by the tenants. This aspect of the application is therefore dismissed.

\$23.47: *cost of photographs*

\$48.37: *cost of registered mail*

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, these aspects of the application are hereby dismissed.

\$50.00: *filing fee*

As the landlords have achieved a measure of success with this application, I find that they have established entitlement to recovery of the full filing fee.

Entitlement: \$1,700.00 (\$1,100.00 + \$550.00 + \$50.00).

TENANTS

In their application the tenants have rounded off the amount of compensation sought to \$3,500.00. However, identification of specific compensation is limited to the following:

\$252.17: *Fortis gas utility to April 20, 2014*

\$200.00: *Fortis gas "only to be unhooking as of April 22nd/2014"*

\$55.97: *hydro*

First, I note that the tenants have a “credit” for hydro in the amount of \$55.97, and not an outstanding bill for that amount.

Further, the tenancy agreement provides that the tenants are responsible for paying the costs of utilities which include gas and hydro. This aspect of the application must therefore be dismissed.

\$43.46: cost of unhooking cable

The tenancy agreement provides that it is the responsibility of the tenants to pay for certain utilities including hydro, gas and cable. Accordingly, I find that the tenants have failed to meet the burden of proving entitlement to costs arising from disconnection of cable, and this aspect of the application is therefore dismissed.

\$114.00: cost of self storage of belongings after vacating the unit

I find there is insufficient evidence that the condition of the unit failed to comply with the “health, safety and housing standards required by law,” or that it was otherwise not suitable for occupation by tenants. In the result, I find that the tenants have failed to meet the burden of proving entitlement to costs related to storage, arising from their claim that possessions had to be quickly removed from the unit because of a problem with mold. This aspect of the application is therefore dismissed.

\$22.68: cost of registered mail

\$12.31: cost of DVDs for video evidence

As noted above, 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 application is hereby dismissed.

\$550.00: return of security deposit

The disposition of the security deposit is addressed below.

\$50.00: filing fee

As the tenants have not succeeded with the principal aspects of their application, I find that their application to recover the filing fee must also be dismissed.

Entitlement: \$00.00

Offsetting the respective entitlements, I find that the landlords have established a net claim of **\$1,700.00** (\$1,700.00 - \$00.00). I order that the landlords retain the security deposit of **\$350.00**, and I grant the landlords a **monetary order** for the balance owed of **\$1,350.00** (\$1,700.00 - \$350.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords in the amount of **\$1,350.00**. 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 28, 2014

Residential Tenancy Branch

