



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to an application by the landlords for a monetary order reflecting compensation for unpaid rent or utilities / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlords are entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the 1 year fixed term of tenancy began April 01, 2013. Accordingly, while not specified in the agreement, I find that the end date of the fixed term is March 31, 2014. The tenancy agreement provides that monthly rent of \$1,800.00 is due and payable in advance on the first day of each month; however, the parties agreed to reduce this amount by \$50.00 to \$1,750.00 effective June 01, 2013. A security deposit of \$900.00 was collected. The tenancy agreement also provides that the tenants are responsible for payment of the following utilities: "electricity, natural gas, telephone and internet." A move-in condition inspection report was completed with the participation of both parties (agent acting on behalf of the landlords).

By email dated November 30, 2013, the tenants gave notice to end tenancy effective December 31, 2013. The tenants claim there was mold in the house which had a negative impact on their daughter's health, and that this was the reason leading to their early termination of the tenancy. A move-out condition inspection report was completed with the participation of both parties on December 23, 2013 (agent acting on behalf of the landlords). The tenants provided their forwarding address on the report. Arising from advertising online and in local newspapers, the landlords found new renters for the unit effective March 01, 2014.

The landlords filed their application for dispute resolution on April 17, 2014. There is no application for dispute resolution before me from the tenants.

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 following particular sections of the Act:

Section 32 of the Act addresses **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.

Section 37 of the Act speaks to **Leaving the rental unit at the end of a tenancy**, in part:

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and....

Section 45 speaks to **Tenant's notice**, in part:

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 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.

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.

Based on the documentary evidence and testimony of the parties, and in view of the relevant statutory provisions, the various aspects of the landlords' claim and my related findings are set out below.

\$1,750.00: *unpaid rent / loss of rental income for January 2014*

\$1,750.00: *unpaid rent / loss of rental income for February 2014*

I find that the tenants ended the fixed term tenancy prior to the date specified in the tenancy agreement as the end of the tenancy. I also 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.

In relation to the tenants' stated reasons for ending the fixed term tenancy early, there is no evidence before me that the unit failed to comply with "the health, safety and housing standards required by law," and as noted earlier, the tenants have not filed an application for dispute resolution

\$160.00: *cleaning in the unit*

During the hearing the landlords withdrew this aspect of their application.

\$346.24: *(\$163.16 + \$183.08) Fortis natural gas*

It was determined during the hearing that these costs apply, respectively, to the months of January and February 2014. The tenants dispute the quantum, claiming that monthly bills are generally closer to \$100.00. However, there are no invoices in evidence which might provide a basis of comparison, and the landlords testified that levels of heat maintained in the unit were not exceptional during this period. In the result, I find that the landlords have established entitlement to the full amount claimed.

\$95.44: *(\$32.36 + \$63.08) hydro*

During the hearing the tenants testified that they do not dispute this aspect of the landlords' claim. Accordingly, I find that the landlords have established entitlement to the full amount claimed.

\$71.84: *(\$18.90 + \$52.94) newspaper advertising for new renters*

During the hearing the tenants testified that they do not dispute this aspect of the landlords' claim. Accordingly, I find that the landlords have established entitlement to the full amount claimed.

\$167.97: *(\$55.99 + \$55.99 + \$55.99) online (Kijiji) advertising for new renters*

It was noted during the hearing that advertising on *Kijiji* is available free of charge. However, in this case the landlords paid a weekly fee of \$55.99 x 3 for "top add" advertising on *Kijiji*, which is a means pursuant to which a particular advertisement is consistently and systematically given high priority for 1 week at a time. While I find that the online advertising reflects the landlords' efforts to mitigate the loss of rental income, I find that the tenants ought not to bear the cost incurred by the landlords for choosing to pay for a higher level of advertising which can be available online for free. This aspect of the application is therefore dismissed.

\$50.00: *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.

Entitlement: \$4,063.52

I order that the landlords retain the security deposit of **\$900.00**, and I grant the landlords a **monetary order** for the balance owed of **\$3,163.52** (\$4,063.52 - \$900.00).

The tenants testified that they waive any entitlement they may have to the double return of the security deposit pursuant to section 38 of the Act, which speaks to **Return of security deposit and pet damage deposit**. For their part, the landlords testified that any delay in their filing of the application for dispute resolution was not ill intended, and that it arose from their understanding that it was first necessary to have in their possession all relevant receipts and utilities statements in support of their application.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords in the amount of **\$3,163.52**. 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 21, 2014

Residential Tenancy Branch

