



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

The units which are the subjects of this dispute are the upstairs portion and the downstairs portion of the same house.

As to the upstairs unit, pursuant to a written tenancy agreement the fixed term of tenancy is from August 01, 2013 to July 31, 2016. Monthly rent of \$1,850.00 is due and payable in advance on the first day of each month. The tenancy agreement documents that a security deposit of \$925.00, in addition to a pet damage deposit of \$925.00 were collected. A move-in condition inspection report was completed with the participation of both parties.

In regard to the downstairs unit, pursuant to a written tenancy agreement the fixed term of tenancy is from October 01, 2013 to July 31, 2016. Monthly rent of \$650.00 is due and payable in advance on the first day of each month. The tenancy agreement

documents that a combined security / pet damage deposit of \$650.00 was collected. A move-in condition inspection report was completed with the participation of both parties.

By email dated July 30, 2014 the tenants gave notice to end tenancy effective at the end of August 2014. Rent was paid for August 2014 in the limited amount of \$1,250.00; \$925.00 of this was $\frac{1}{2}$ of the rent due for the upstairs unit ($\$1850.00 \div 2$), and \$325.00 of this was $\frac{1}{2}$ of the rent due for the downstairs unit ($\$650.00 \div 2$).

Pursuant to section 46 of the Act which addresses **Landlord's notice: non-payment of rent**, arising from the unpaid total balance of rent due on August 01, 2014 in the amount of \$1,250.00, the landlords issued a 10 day notice to end tenancy dated August 02, 2014. The notice was served in-person on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is August 15, 2014. Subsequently, while the tenants filed an application to dispute the notice on August 05, 2014, they made no further payment toward rent. After removing personal possessions and completing cleaning within the unit, the tenants had effectively vacated the unit by August 31, 2014. A move-out condition inspection report was not completed. Thereafter, the tenants provided their forwarding address by way of email on or about September 21, 2014.

The landlords testified that online advertising for new renters began on or about July 31, 2014. Despite this, new renters have not yet been found for the unit(s). The landlords filed their application for dispute resolution on August 21, 2014.

Analysis

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

Section 26 of the Act addresses **Rules about payment and non-payment of rent**, in part:

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45 of the Act addresses **Tenant's notice**, and provides 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 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 affirmed testimony of the parties, the various aspects of the respective applications and my related findings are set out below.

LANDLORDS

Order of Possession for Unpaid Rent

As the tenants vacated the unit subsequent to the landlord's issuance of a 10 day notice, I consider the landlord's application for an order of possession to be withdrawn.

\$1,250.00: *combined unpaid rent (upstairs & downstairs) from August 16 - 31, 2014*

\$2,500.00: *loss of rental income for September 2014*

\$2,500.00: *loss of rental income for October 2014*

I find that the tenants failed to pay the full amount of rent which was due on August 01, 2014 in the amount of \$2,500.00, and that they paid only ½ in the amount of \$1,250.00.

I also find that notice given by the tenants to end the fixed term tenancy does not comply with the above statutory provisions. Specifically, I find that the tenants ended the fixed term “earlier than the date specified in the tenancy agreement as the end of the tenancy.” Further, I find that the landlord undertook to mitigate the loss of rental income by advertising for new renters in a timely fashion. In the result, I find that the landlord has established entitlement to the full amount claimed up to the end of October 2014 of **\$6,250.00**.

\$100.00: *filing fee*

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

Total: \$6,350.00 (\$6,250.00 + \$100.00)

TENANTS

Cancellation of a notice to end tenancy for unpaid rent

As noted above, the tenants vacated the unit subsequent to the landlord’s issuance of a 10 day notice to end tenancy. In the result, I consider this aspect of the tenant’s application to be withdrawn.

\$1,500.00: *repayment of pet damage deposit(s) in combination with miscellaneous costs arising from cleaning and repairs alleged to have been undertaken in the unit*

I find that the tenants have not established entitlement to repayment of any portion of their pet damage deposit(s), and my related findings are set out more fully below.

As to the balance of this aspect of the claim, the tenants testified that they incurred certain costs in unspecified amounts during the term of tenancy. They claim that these costs arose from such things as shampooing the carpets at the start of tenancy, in addition to repairs to the garburator and kitchen tap.

The landlords testified that the tenants were eager to quickly take possession of the unit at the start of tenancy and that they acknowledged the condition of the unit by way of their signatures on the move-in condition inspection report(s).

The landlord also agreed that a discussion had taken place between the parties in regard to any repairs for which the tenants may take responsibility during the tenancy. Ultimately, however, the landlords testified that no related receipts were ever brought to their attention by the tenants, and that this matter only resurfaced during the period when respective applications for dispute resolution were being filed.

In the absence of sufficient evidence, copies of receipts or written agreements reached between the parties, for example, I find that the tenants have failed to meet the burden of proving entitlement to this aspect of the claim and it is hereby dismissed.

\$50.00: *filing fee*

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

Total: Nil

Offsetting the respective entitlements, I find that the landlords have established a net entitlement of **\$6,350.00**. I order that the landlords retain the security / pet damage deposits in the combined total amount of **\$2,500.00** (\$925.00 + \$925.00 + \$650.00), and I grant the landlord a **monetary order** for the balance owed of **\$3,850.00** (\$6,350.00 - \$2,500.00)

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords in the amount of **\$3,850.00**. 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: October 07, 2014

Residential Tenancy Branch

