



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 the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent, damage or loss under the Act, to retain the pet and security deposits and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant by registered mail. The landlord was out of the country at the time of the hearing and did not have the registered mail receipt before him.

The landlord was given until February 4, 2015 to supply a copy of the registered mail receipt and tracking number. The landlord submitted a copy of the Canada Post registered mail tracking history which showed the registered mail had been sent on August 16, 2014. This mail was delivered on August 21, 2008; L.C. signed accepting the mail. The landlord supplied a Canada Post tracking document, setting out the details of service. The landlord used an address that was supplied by the tenant at the beginning of August 2014.

Therefore, as the registered mail was delivered to the address supplied by the tenant, I find these documents are deemed to have been served in accordance with section 89 and 90 of the *Act*; effective January 9, 2015. The tenant did not appear at the hearing.

Preliminary Matters

The landlord submitted the application in July 2014; the evidence, including the detailed calculation of the claim was given to the Residential Tenancy Branch (RTB) on January 6, 2015. The evidence was sent to the tenant, via registered mail, on January 9, 2015 and retrieved by the tenant on that date. The tenant signed, accepting the mail.

The landlord agreed to provide a copy of the registered mail receipt and tracking number, no later than February 4, 2015. The landlord submitted a copy of the Canada Post registered mail tracking history which showed the registered mail had been sent on accepted on January 9, 2015. The landlord used the same address for service that was

used for the hearing documents sent in August 2014. The signature indicated on the Canada Post tracking document was that of tenant J.W. Therefore, I find that the tenant received the evidence on January 9, 2015; the date the mail was accepted at the post office.

The application failed to set out a detailed calculation of the claim made; this was supplied as part of the evidence received by the tenant on January 9, 2015. The Rules of Procedure require an applicant to serve evidence and the detailed calculation at the time the application is given to the respondent. This did not occur. However, the tenant did receive the application, evidence and calculation and chose not to attend the hearing, to respond to the claim. Therefore, I considered the claim as detailed in the evidence.

The landlord claimed \$156.45 in costs related to hearing preparation. An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act, but "costs" incurred with respect to filing a claim are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. As a result, this portion of the claim is denied and the landlord is at liberty to write it off as a business expense.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$506.16 for cleaning and utilities?

Is the landlord entitled to loss of rent revenue in the sum of \$3,791.84?

May the landlord retain the pet and security deposits in partial satisfaction of the claim?

Background and Evidence

This fixed-term tenancy commenced on January 1, 2014 and was to end effective June 30, 2014. The tenant was to give vacant possession of the unit at the end of the tenancy. Rent was \$950.00 per month, due on the 1st day of each month. A pet and security deposit in the sum of \$475.00 each was paid. The tenant was to pay utilities.

The tenancy agreement specified that rent of the whole house was \$2,850.00 and that a minimum of 3 tenants, and up to 4, would share the home. A copy of the tenancy agreement was supplied as evidence.

The landlord had 2 other tenant's-in-common living in the home; they both vacated the unit on the last day of their tenancy term.

The landlord has made the following claim:

| | |
|--|-------------------|
| Cleaning & carpet cleaning | \$451.90 |
| Utilities | 54.36 |
| Loss of rental income 33 days X \$114.90 per day | 3,791.84 |
| TOTAL | \$4,298.10 |

There had been a flood in the home, no fault of the tenant, which required vacant possession so repairs could be completed. The landlord had arranged to have the repairs commence immediately following the end of the fixed-term; June 30, 2014. On May 28, 2014 the landlord emailed the tenant to inform him he must vacate by the end of the fixed term and the tenant responded, acknowledging the end of the tenancy.

The tenant over-held until August 2, 2014, at which point the landlord obtained vacant possession of the home. On July 29, 2014 the tenant had sent the landlord an email indicating he would clean and hire a carpet cleaner; that did not occur. The landlord walked through the property with the tenant; an inspection report was not completed. The tenant told the landlord he could keep the deposits as the tenant did not have time to clean the home.

The flood repairs were commenced on August 11, 2014 and completed within the next 4 weeks. Between September 6 and 12, 2014 the landlord cleaned the home; the carpets were cleaned on September 8, 2014; a copy of the invoice was supplied as evidence. The carpets were not cleaned until the flood damage had been repaired.

The landlord said that during the tenancy the unit had been kept clean and in good condition. A friend of the landlord's had been one of the tenants-in-common. In the time between June 30 and August 2, 2014 the tenant allowed his dog to bring in branches to the home and the pet caused staining to the rugs. The landlord supplied photographs taken of the carpeting, showing stains in the living room, hallway and stairs. The bath tub was dirty and considerable refuse was left outside.

The landlord charged \$120.00 for cleaning and cleaning supplies. Several receipts for cleaning products were supplied as evidence. The landlord only charged for items that were used; not for those that could be retained for later use.

The tenant paid \$450.00 as a per diem rate to cover the time he remained in the unit, to July 15, 2014. A copy of an invoice issued by the landlord on July 8, 2014, was supplied as evidence.

The landlord said that since the tenant did not allow the flood repairs to proceed as planned, a delay of 1 month resulted, which translated to a loss of an additional one month's rent revenue for the whole house. If the tenant had vacated at the end of June the repairs could have been completed by August and the home rented in August for the sum achieved; \$3,495.00. The landlord did not show the home during August as it was not in any state to show; given the extensive repairs that had been required as the result of flood damage.

The landlord hired a property management company who were able to locate a tenant, effective October 15, 2014. A copy of the newly signed tenancy agreement showed that the whole house was rented for \$3,495.00 per month.

The landlord said that since the market rent achieved for the unit was \$3,495.00 the per diem sum the tenant owed while over-holding should be based on the equivalent of the lost potential rent revenue the landlord may have achieved.

On September 9, 2014 the landlord sent the tenant a breakdown of a claim for damages. On September 12, 2014 the tenant sent the landlord a message, agreeing to pay \$1,683.22; less the deposits and the \$475.00 he had given the landlord; for a balance of \$258.22. The tenant did not pay any sum.

The landlord supplied a copy of the hydro and gas bills in the sums claimed; both services were terminated on August 2, 2014. Clause 10 of the tenancy agreement required the tenant to pay utilities.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 37(2) of the Act provides:

(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

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

From the evidence before me, I find, in the absence of the tenant, who was served notice of the hearing that the unit was not left reasonably clean at the end of the tenancy. The photographs showed carpeting that was in need of cleaning and garbage left inside and outside of the unit. Therefore, based on the verified costs, I find the landlord is entitled to cleaning costs as claimed.

RTB policy suggests that a tenant is not liable to pay rent after a tenancy agreement has ended, however; if a tenant remains in possession of the premises (over-holds), the tenant will be liable to pay occupation rent on a *per diem* basis until the landlord recovers possession of the premises. Policy does not address a situation where a

tenancy has ended, the tenant has over-held and then a subsequent loss of potential revenue is suggested.

The landlord is attempting to recover costs that might have been achieved if flood repairs had been completed within 1 month of June 30, 2014. The delay in repair appears to have occurred as the result of the tenant's failure to vacate at the end of the fixed-term, June 30, 2014.

A claim for rent that might have been achieved for a subsequent tenancy does not align with policy. A per diem owed for over-holding is based on the rent that was payable, not a sum that could or might be achieved after the tenancy ended.

I have rejected the landlord's submission that since he was able to achieve a rent in the sum of \$3,475.00 once repairs were completed; the per diem should be based on that amount. The rent during the tenant's stay was \$950.00 and any per diem rate must be calculated from the rent that was paid during the tenancy. Therefore, based on policy, which I find takes a reasonable stance, I find that the landlord is entitled to a per diem amount, based on the value of the tenancy that existed with the tenant.

Therefore, I find that the landlord is entitled to a per diem over-holding sum of \$31.23 per day from July 1 to August 2, 2014 ($\$950.00 \times 12/365$). The tenant was to vacate the unit on June 30 and did not do so until August 2, 2014. As the tenant has paid \$475.00, I find that the landlord is entitled to the balance in the sum of \$558.56.

I find the landlord is entitled to the utility costs claimed. The sum is verified by the bills and supported by clause 10 of the tenancy agreement.

Therefore, the landlord is entitled to the following compensation:

| | Claimed | Accepted |
|--|-----------------|-------------------|
| Cleaning & carpet cleaning | 451.90 | \$451.90 |
| Utilities | 54.36 | 54.36 |
| Loss of rental income 33 days X \$114.90 per day | 3,791.84 | 558.56 |
| TOTAL | 4,298.10 | \$1,064.82 |

The balance of the claim is dismissed.

I find that the landlord's application has merit and that the landlord is entitled to recover a \$50.00 filing fee from the tenant, equivalent to that paid for a claim under \$5000.00, for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's pet and security deposits in the sum of \$950.00 in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$164.82. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to compensation in the sum of \$1,064.82; the balance of the claim is dismissed.

The landlord may retain the pet and security deposits.

The landlord is entitled to filing fee costs.

This decision is final and binding and 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: February 4, 2015

Residential Tenancy Branch

