



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing dealt with an application by the landlords for a monetary order.

The application was originally heard on June 25, 2014 and a decision rendered on June 26, 2014. The decision notes that the tenants, who did not appear at the hearing, were served personally with the Application for Dispute Resolution and Notice of Hearing.

The landlords applied to the Supreme Court of British Columbia for judicial review of the arbitrator's decision. Counsel for the landlords advised that the tenant did not appear at the hearing, which was conducted on November 20, 2014. In an order dated December 13, 2014, the Supreme Court order, inter alia, that the arbitrator's decision be set aside and remitted to the Residential Tenancy Branch for re-hearing.

In an e-mail dated March 24, 2015 the landlords' lawyer was advised by a Senior Information Officer of the Residential Tenancy Branch that there was nothing for the landlords to serve on the tenants as she had sent the hearing letter to the tenants. The hearing letter, which is dated March 23, 2014, is addressed to the tenants at their previous address.

The records of the Residential Tenancy Branch show that the hearing letter was returned to the Residential Tenancy Branch. The same Senior Information Officer spoke to the female tenant on the telephone. The female tenant provided a new mailing address and an e-mail address to the Senior Information Officer. The records of the Residential Tenancy Branch show that the hearing letter was re-sent to the tenants.

The tenants did not appear at the hearing. Based on the records of the Residential Tenancy Branch I find that they did have notice of this hearing.

Issue(s) to be Decided

Are the landlords entitled to a monetary order and, if so, in what amount?

Background and Evidence

This one year fixed term tenancy commenced June 15, 2013. The monthly rent of \$1350.00 was due on the first day of the month.

In January 2014 the tenants were served with a 10 Day Notice to End Tenancy for Non-Payment of Rent. They moved out of the rental unit by the end of January.

The landlords applied for a monetary order for unpaid rent. The hearing of their claim was on February 13, 2014. In a decision of the same date the landlords were awarded the unpaid rent for December, January and February.

The decision notes that: "Counsel for the landlords states that there is no further monetary claim for money owed or compensation for damage or loss at this time." Later the decision notes: "Counsel for the landlords states that the tenants have not cleaned the unit and have left garbage at the unit. This will required extra work by the landlords to prepare the unit for re-rental for March 01, 2014. The landlords are confident that they will be able to get the unit re-rented but if they cannot do so they may pursue the tenants for loss of rental income as this was a fixed term tenancy."

The landlords posted the unit on Craigslist, their usual means of advertising the unit, at a reduced rental rate of \$1250.00. The ads were posted on February 3 and 13.

When they were not successful in re-renting the unit for March 1 they filed this application for dispute resolution on March 11, 2014. They claimed the March rent, cleaning, and lock replacement. The tenants were served personally with the application for dispute resolution and notice of hearing. At the same time they were also served personally with the order from the first hearing.

The landlords succeeded in re-renting the unit effective April 1, 2014 at the reduced rent of \$1250.00 per month.

The landlords filed evidence of cleaning costs in the amount of \$120.00 and lock replacement in the amount of \$67.11.

Analysis

The relevant law relating to claims for rent is summarized in *Residential Tenancy Policy Guideline 3: Claims for Rent and Damages for Loss of Rent*. The *Guideline* states:

"Where a tenant has fundamentally breached the tenancy agreement or abandoned the

premises, the landlord has two options. These are:

1. Accept the end of the tenancy with the right to sue for unpaid rent to the date of abandonment;
2. Accept the abandonment or end the tenancy, with notice to the tenant of an intention to claim damages for loss of rent for the remainder of the term of the tenancy.

These principles apply to residential tenancies and to cases where the landlord has elected to end a tenancy as a result of fundamental breaches by the tenant of the Act or tenancy agreement. Whether or not the breach is fundamental depends on the circumstances but as a general rule non-payment of rent is considered to be a fundamental breach.

If the landlord elects to end the tenancy and sue the tenant for loss of rent over the balance of the term of the tenancy, the tenant must be put on notice that the landlord intends to make such a claim. Ideally this should be done at the time the notice to end the tenancy agreement is given to the tenant. The filing of a claim for damages for loss of rent and service of the claim upon the tenant *while the tenant remains in possession of the premises* is sufficient notice. Filing of a claim and service upon the tenant after the tenant has vacated may or may not be found to be sufficient notice, depending on the circumstances. Factors which the arbitrator may consider include, but are not limited to, the length of time since the end of the tenancy, whether or not the tenant's whereabouts was known to the landlord and whether there had been any prejudice to the tenant as a result of the passage of time. The landlord may also put the tenant on notice of the intent to make a claim of that nature by way of a term in the tenancy agreement. However, where a tenant has abandoned the premises and the tenancy has ended with the abandonment, notice must only be given within a reasonable time after the landlord becomes aware of the abandonment and is in a position to serve the tenant with the notice or claim for damages."

Although this application for dispute resolution was not issued and served on the tenants while they were in possession of the rental unit I find that the following factors lead to the conclusion that the tenants were put on notice that the landlords intended to claim damages for loss of rent for the remainder of the term of the tenancy:

- The tenants were personally served with the application for dispute resolution and notice of hearing for the February 13 hearing and chose not to appear at the hearing where the issue of the March rent was discussed.
- The tenants were personally served with the February 13 decision, which is very clear that if the landlords were not successful in re-renting the unit by March 1 a claim for the March rent could be made against the tenants.
- This application for dispute resolution was served within six weeks of the end of the tenancy and less than two weeks after the cause of action arose. There was not prejudice to the tenants as a result of the passage of time.

I find that the tenants responsible for the March rent in the amount of \$1350.00. Although at law the landlords could have claimed the difference between the rent the tenants agreed to pay and the reduced rent received by the landlords for the balance of the term of the tenancy the landlords did not claim for that loss.

Based on the evidence filed I also award the landlords the cost of cleaning in the amount of \$120.00 and lock replacement in the amount of \$67.11.

Finally, as the landlords were successful on their application they are entitled to reimbursement from the tenants of the \$50.00 fee they paid to file it.

Conclusion

I find that the landlords have established a total monetary claim of \$1587.11 comprised of the March rent in the amount of \$1350.00; cleaning in the amount of \$120.00; lock replacement in the amount of \$67.11 and the \$50.00 fee paid by the landlords for this application and I grant the landlords an order under section 67 in this amount. If necessary, this order may be 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: May 26, 2015

Residential Tenancy Branch

