



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, MND, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; to keep all or part of the security deposit; for "other", and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on January 26, 2015 the Application for Dispute Resolution, the Notice of Hearing, and all the documents the Landlord submitted to the Residential Tenancy Branch on January 22, 2015 were sent to each Tenant, via registered mail. She stated that the documents were sent to a forwarding address provided by the Tenant, via email, on January 09, 2015. She cited two tracking numbers that corroborates this statement. These tracking numbers are different than the Canada Post receipts submitted in evidence, which do not relate to service of these documents.

In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however neither Tenant appeared at the hearing. The hearing proceeded in the absence of the Tenants.

Issue(s) to be Decided

Is the Landlord entitled to compensation for lost revenue, for damage to the rental unit, and for the cost of rekeying the rental unit/replacing an entry fob?

Is the Landlord entitled to retain all or part of the security deposit?

Background and Evidence

The Landlord stated that:

- the Tenants moved into the rental unit on December 12, 2014;
- the male Tenant signed a fixed term tenancy agreement, the fixed term of which began on December 15, 2014 and ended on November 15, 2015;
- the female Tenant is not named in the written tenancy agreement however she entered into a verbal tenancy agreement with the Landlords;
- the Tenants agreed to pay rent of \$1,500.00 by the first day of each month;
- the Tenants paid a security deposit of \$750.00;
- on December 31, 2014 the Tenants informed the Landlord that they were vacating the rental unit; and

- the Tenants vacated the rental unit on December 31, 2014. .

The Landlord is seeking compensation for lost revenue for January of 2015, in the amount of \$1,500.00. The Landlord contends that they lost revenue for the month of January because the Tenants vacated the unit without proper notice. The Landlord stated that on January 03, 2015 the Landlord advertised the rental unit on a popular website; that they were unable to find a new occupant as a result of that advertisement; and that on, or about, January 09, 2015 the Landlord decided to sell the rental unit so they removed the rental advertisement.

The Landlord is seeking compensation, in the amount of \$95.13, for the cost of servicing a washing machine in the rental unit. In regards to this claim the Landlord stated that:

- when the Tenants moved into the rental unit they reported that the front loading washing machine had an odour;
- she personally cleaned the machine for the Tenants;
- the Tenants again reported that the washing machine smelled;
- that she contacted an appliance repair company and asked them to clean the machine on behalf of the Tenants; and
- the technician who cleaned the machine informed the Tenants that they should run vinegar through the machine if the problem returns.

The Landlord is seeking compensation, in the amount of \$375.00, for the cost of removing the washing machine from the hallway and moving it back into the rental unit at the end of the tenancy. In regards to this claim the Landlord stated that:

- after the washing machine had been serviced by the appliance repair company, the Tenants informed the Landlords the odour persisted;
- the Tenants informed the Landlords that they intended to remove the washing machine from the rental unit;
- on December 23, 2014 the Tenants moved the washing machine out of the rental unit and left it in the common hallway;
- the male Landlord and two employees removed the washing machine from the common hallway; and
- the male Landlord and two employees returned the washing machine to the rental unit at the end of the tenancy.

The Landlords submitted a "job sheet" which indicates it took three people 13.5 hours to remove the washing machine from the residential complex, to bring it to the "shop", to bring it back to the rental unit after the tenancy ended, and to reinstall it. The "job sheet" indicates the cost of the work was \$375.00.

During the hearing the Landlords withdrew the claim of \$100.00 to replace the garage "fob".

The Landlords are seeking compensation, in the amount of \$218.90, to rekey the lock to the rental unit. In regards to this claim the Landlord stated that:

- the Landlords and the Tenants agreed to meet on January 01, 2015 for the purposes of inspecting the rental unit and to return the keys;
- the Tenants did not attend the scheduled meeting on January 01, 2015; and
- on January 09, 2015 the Tenants sent an email informing the Landlords that they keys would be returned by mail.

The Landlords submitted an invoice from a locksmith, in the amount of \$218.90, that shows this expense was incurred.

The Landlords are seeking compensation, in the amount of \$150.00, for cleaning the rental unit. The Landlord stated that various areas in the rental unit required cleaning and that the Landlords hired a cleaner for that purpose. The Landlords submitted an invoice to show this expense was incurred.

At the hearing the Landlords withdrew the application to recover the filing fee from a previous dispute resolution proceeding.

The Landlords are seeking compensation, in the amount of \$38.48, for the cost of mailing documents to the Tenants regarding these proceedings.

Analysis

On the basis of the undisputed evidence, I find that the male Tenant entered into a written tenancy agreement with the Landlord and the female Tenant entered into a verbal tenancy agreement with the Landlord, which required them to pay monthly rent of \$1,500.00 by the first day of each month.

I find that the Tenants failed to comply with section 45 of the *Act* when the Tenants ended this without proper written notice. I find that the premature end to the tenancy resulted in the Landlords experiencing a loss of revenue for the month of January of 2015, in the amount of \$1,500.00.

Section 7(2) of the *Act* requires landlords to make reasonable efforts to mitigate their losses whenever a tenant vacates a rental unit without proper notice, by advertising the unit in a timely manner.

I find that the Landlords initially made reasonable efforts to locate a new tenant for January of 2015 by advertising the rental unit in a reasonably timely manner. In spite of those efforts I find the Landlords were unable to find a new tenant for the period between January 01, 2015 and January 09, 2015, which they would not have experienced if the Tenants had not prematurely ended the tenancy. I therefore find that the Landlords are entitled to compensation for lost revenue experienced during that period, at a daily rate of \$48.39, which equates to \$435.51.

Given that the rental unit was no longer being advertised for rent after January 09, 2015, I find that the Landlords did not make a reasonable effort to mitigate their losses after that time and that they are not, therefore, entitled to compensation for any lost revenue after that period.

Section 32(1) of the *Act* requires landlords to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. When a tenant feels there is a deficiency with a rental unit the tenant has the right to report that concern to the landlord. In the event the Landlord opts not to remedy the reported deficiency, the Tenant has the option of either living with the deficiency or filing an Application for Dispute Resolution requiring the Landlord to comply with section 32(1) of the *Act*.

In these circumstances the Tenants reported a concern regarding an odour in the washing machine and the Landlords opted to respond to that concern by hiring a professional. In the event the Landlords did not feel the “repair” was necessary, they had the option of simply informing the Tenants they were not responding to their concerns and/or suggesting how the Tenants can reduce or eliminate the odour. As the Landlords opted to remedy the deficiency by hiring a professional, I cannot conclude that the Tenants are responsible for the costs of that “repair”. I therefore dismiss the Landlords’ claim for \$95.13 for having the washing machine serviced.

Section 37(2)(a) of the *Act* requires tenants to leave a rental unit clean and undamaged at the end of the tenancy. In my view, this includes protecting appliances that are provided with the rental unit and ensuring those appliances are in the rental unit at the end of the tenancy. On the basis of the undisputed evidence, I find that the Tenants failed to comply with section 37(2)(a) of the *Act* when they left the washing machine in a common area of the residential complex, where it was subject to theft/damage.

I find that the Landlords acted appropriately when they moved the washing machine from the common hallway of the residential complex after it had been removed from the rental unit by the Tenants. I find that failure to do so would likely have resulted in the loss of the washing machine. I therefore find that the Landlords are entitled to compensation for the cost of removing the machine from the complex, storing the machine, and reinstalling the machine at the end of the tenancy, in the amount of \$375.00.

Section 37(2)(b) of the *Act* requires tenants to give the landlord all the keys or other means of accessing the residential property at the end of the tenancy. On the basis of the undisputed evidence, I find that the Tenants failed to comply with section 37(2)(b) of the *Act* when they failed to return the keys to the rental unit in a timely manner. I therefore find that the Landlord is entitled to compensation for the \$218.90 they paid to re-key the rental unit.

On the basis of the undisputed evidence, I find that the Tenants failed to comply with section 37(2)(a) of the *Act* when they failed to leave the rental unit in reasonably clean condition. I therefore find that the Landlord is entitled to compensation for the \$150.00 they paid to clean the rental unit.

The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow an Applicant to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the Landlord’s claim for mailing costs, as they are costs which are not denominated, or named, by the *Act*.

I find that the Landlords’ application has merit and that the Landlords are entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlords have established a monetary claim, in the amount of \$1,232.41, which is comprised of \$435.51 in lost revenue, \$746.90 in damages, and \$50.00 in compensation for the filing fee paid by the Landlords for this Application for Dispute Resolution. Pursuant to section

72(2) of the *Act*, I authorize the Landlords to retain the Tenants' security deposit of \$750.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlords a monetary Order for the amount \$482.41. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia 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: July 29, 2015

Residential Tenancy Branch

