



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, 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 unpaid rent; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on March 12, 2015 the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord submitted with the Application for Dispute Resolution were sent to each Tenant, via registered mail. The female Tenant stated that both Tenants received the aforementioned documents and that she was representing the male Tenant at these proceedings. In the absence of evidence to the contrary, I find that these documents have been served to both Tenants in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the male Tenant did not appear at the hearing.

The parties present at the hearing were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent/lost revenue and damage to the rental unit?

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

Background and Evidence

The Landlord and the female Tenant agree that:

- this tenancy began in September of 2014;
- the Tenants agreed to pay rent of \$1,100.00 by the first day of each month, with the exception of rent for September which was due on September 05, 2014;
- the Tenants paid a security deposit of \$550.00;

- on February 03, 2015 the Tenants informed the Landlord, via text message, that they intended to end the tenancy at the end of February of 2015; and
- the Tenants vacated the rental unit on February 21, 2015.

The Landlord is compensation, in the amount of \$1,100.00, for lost revenue from March of 2015 which the Landlord attributes to the Tenants' improper notice to end the tenancy. The Landlord stated that sometime in early February the rental unit was advertised on social media and in the local newspaper; that his daughter subsequently agreed to move into the rental unit on April 01, 2015; that his daughter had to give notice to end her previous tenancy before moving into the rental unit; that his daughter may have moved personal property into the rental unit prior to April 01, 2015; and he did not receive any rent for March of 2015.

The female Tenant stated that she was told the Landlord's daughter moved into the rental unit in March of 2015, although she has no evidence to corroborate this information.

A condition inspection report was completed at the beginning and end of this tenancy, a copy of which was submitted in evidence.

The Landlord is seeking compensation, in the amount of \$2,373.98, for repairing the surface of the deck of the rental unit. The parties agree that the deck can be accessed via a set of exterior stairs, which do not have a gate.

The Landlord stated that the deck was not damaged at the start of the tenancy. The female Tenant stated that there were several small holes in the deck at the start of the tenancy. The condition inspection report completed at the start of the tenancy does not note any damage to the exterior of the rental unit.

The Landlord and the female Tenant agree that at the end of the tenancy there were several holes in the surface of the deck, which appear to have been caused by a dog chewing the deck.

The female Tenant stated that she does not believe her dog caused the damage as she never left the dog unattended. She stated that the person living in the lower rental unit had three or four dogs and it is possible that one or more of these dogs caused the damage.

The Landlord stated that the person living in the lower rental unit has three geriatric dogs that were not able to climb the stairs to the deck and one small dog that was too small to cause the damage to the deck.

On the condition inspection report completed on February 02, 2015 the damage to the surface of the deck is noted.

The Tenant stated that she told the Landlord he could retain \$280.00 of her security deposit in compensation for the damage done to the deck. The female Tenant stated that she only agreed to the deduction as she was not certain her dog caused the damage; that she was trying to “do the right thing” by agreeing to repair the actual damage to the deck; and that she is not willing to pay for the entire cost of replacing the deck surface.

The Landlord submitted a quote that indicates it will cost \$2,373.98 to replace the deck. The Landlord is not certain of the age of the deck surface but estimates it is approximately ten years old.

Analysis

On the basis of the undisputed evidence, I find that with the exception of September of 2014, the Tenants agreed to pay monthly rent of \$1,100.00 by the first day of each month of the tenancy.

On the basis of the undisputed evidence, I find that on February 03, 2015 the Tenants provided notice of their intent to vacate the rental unit by February 28, 2015 and that rental unit was vacated on February 21, 2015.

I find that the Tenants failed to comply with section 45 of the *Act* when the Tenants failed to provide the Landlord with written notice of their intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. To end this tenancy on February 28, 2015 in accordance with section 45 of the *Act*, the Tenant would have had to provide written notice to the Landlord on, or before, January 31, 2015. As the Tenant did not give written notice to the Landlord until February 03, 2015, I find, pursuant to section 53 of the *Act*, that the earliest effective date of this notice was March 31, 2015.

In the absence of direct evidence to the contrary, I find that the Landlord made reasonable efforts to locate a new tenant for March of 2015 but, in spite of those efforts, did not receive rent for that month. I find that the Landlord would not have experienced the lost revenue if the Tenants remained in the rental unit until the effective date of the Notice to End Tenancy, which was March 31, 2015. I therefore find that the Tenants must compensate the Landlord for the lost revenue, in the amount of \$1,100.00.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 21 of the *Residential Tenancy Regulation* stipulates that a condition inspection report that is signed by both parties is evidence of the state of repair and condition of

the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. As the condition inspection report that was completed at the start of the tenancy does not indicate the deck was damaged and the Tenant has not submitted evidence that convinces me the deck was damaged at the start of the tenancy, I find that I must rely on this report and conclude that the deck was not damaged at the start of the tenancy.

On the basis of the undisputed testimony, I find that the surface of the deck was damaged during the tenancy. I find that the Landlord has submitted insufficient evidence to establish that it was the Tenants' dog that damaged the deck during the tenancy.

I find, on the balance of probabilities, that the Tenants' dog damaged the surface of the deck. In reaching this conclusion I was heavily influenced by the fact that the Tenants agreed to pay \$280.00 to repair the deck. I find it highly unlikely that the Tenants would have agreed to pay any amount for the damage if the Tenants did not believe their dog had caused the damage.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of decks is twenty years and the life expectancy of waterproofing membranes is fifteen years. The guidelines do not specify the life expectancy of the type of surface used on this deck. It is my experience that deck structures typically outlast the surface used on this deck and I therefore find it reasonable to conclude that the life expectancy of this surface is fifteen years.

On the basis of the undisputed estimate that the deck surface was approximately ten years old, I find that the deck surface has depreciated by 67% and that the Landlord is entitled to 33% of the cost of replacing the deck surface.

On the basis of the quote submitted in evidence, I find that it will cost \$2,373.98 to replace the deck surface. I therefore find that the Landlord is entitled to recover 33% of that cost, which is \$783.41

I find that the Landlord's application has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$1,933.41, which is comprised of \$1,100.00 in lost revenue, \$783.41 for the damaged deck, and \$50.00 in

compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenants' security deposit of \$550.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$1,383.41. 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: August 27, 2015

Residential Tenancy Branch

