



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR FF
 AS O

Preliminary Issues

Landlords' Application

Upon review of the Landlord's application for dispute resolution the Landlord wrote, in part, the following in the details of the dispute:

On Dec 6, 2014 the tenant served proper notice that he was leaving the unit at the end of December, he did not pay rent for the end of the required months term to allow me to find another tenant. He refused to give his forwarding address for mail, utilities, and for return of the damage deposit. ...

...The Dispute amount is for lost rental income for January (\$1900), shortfall of rent for the original rental term (\$900), unpaid utilities (\$46.95), and advertising fees to find a new renter (\$35.00), plus filing fee.

[Reproduced as written]

Based on the aforementioned, I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated their intention of seeking compensation for items other than unpaid rent or utilities. The Tenant was informed of these requests by way of being served the Landlord's application for Dispute Resolution. Therefore, I amend the Landlord's application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the Act.

Tenants' Application

Section 59(2) of the Act stipulates that an application for dispute resolution must (a) be in the applicable approved form, (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and (c) be accompanied by the fee prescribed in the regulations.

Upon review of the Tenants' application for Dispute Resolution the Tenants included an amount of \$5,000 in the box beside the line that states "The request for a Monetary Order is for the following amount." The Tenants checked of the boxes on their application to request an Order to allow the tenant to assign or sublet because the landlord's permission has been unreasonable withheld and the box marked "Other".

The Tenants' wrote in the Details of the Dispute as follows:

***CROSS APPLICATION** [Landlords' file number] LANDLORD DENIED THE RIGHT TO SUBLET, ASSIGN, THE UNIT FOR RENTAL ON DEC 29 2015. ALSO THE LANDLORD WAS ASKED TO COMMUNICATE ONLY TO [TENANT'S NAME] BUT CONTINUED TO CALL AND REQUEST INFORMATION FROM [FEMALE TENANT'S NAME], A THIRD PARTY WAS PUT IN PLACE BY THE LANDLORD TO RENT THE UNIT. THE RENTERS WERE TOLD BY THE THIRD PARTY AND THE LANDLORD TO REMOVE ALL AD'S ASAP. 14 PAGES*

[Reproduced as written excluding file number and Tenants' names]

Based on the above, I concluded the Tenants' provided insufficient information on their application or attached to their application which clearly identified the reasons they were seeking the \$5000.00 amount listed on their application. To clarify, there was no description or explanation that would explain what the \$5000.00 claim was for or how they came to the amount of \$5000.00. Accordingly, I declined to hear any submissions regarding a monetary order request. I did however hear the Tenant's submissions relating to the rest of their application. The Tenants' request for monetary compensation was dismissed, with leave to reapply.

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Landlords and the Tenants.

The Landlords filed on February 06, 2015 seeking to obtain a Monetary Order for: unpaid rent or utilities and to recover the cost of the filing fee from the Tenants for this application. The application was amended, as listed above, to include the request for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement.

The Tenants filed on June 10, 2015 seeking to obtain an Order to allow them to assign or sublet because the landlord's permission has been unreasonably withheld and for other reasons.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The hearing was conducted via teleconference and was attended by one Landlord, R.S. and one Tenant D.C. Each person provided affirmed testimony. The Landlord affirmed that he was representing both Landlords and the Tenant affirmed that he was representing both Tenants. Therefore, for the remainder of this decision, terms or references to the Landlords and the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise

Each person gave affirmed testimony that they served the Residential Tenancy Branch (RTB) with copies of the same documents they served each other. Each acknowledged receipt of evidence served by the other and no issues were raised regarding service or receipt of that evidence.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. When and how did this tenancy end?
2. Should the Landlords be ordered to allow the Tenants to sublet the rental unit?
3. Have the Landlords proven entitlement to monetary compensation under the *Act*?

Background and Evidence

The undisputed evidence was the Tenants entered into a one year fixed term tenancy agreement that began on November 1, 2014 and was scheduled to end on November 1, 2015. Rent of \$1,900.00 was due on or before the first of each month. On November 1, 2014 the Tenants paid \$950.00 as the security deposit plus \$50.00 as the pet deposit. Both parties attended and signed the move in condition inspection report on November 1, 2014.

On December 6, 2014 the Tenants served the Landlords with written notice to end their tenancy effective December 31, 2014. The Tenants vacated the property early on December 18, 2014, without informing the Landlords prior to their departure. The Tenants sent the Landlords a text message on December 22, 2014 advising that they had vacated the rental unit and had left the keys in the locked box on the rental property.

The Landlord testified that despite his requests, the Tenants refused to provide him with a forwarding address. He stated that the Tenants suggested that he use their deposits as payment towards the loss of January 2015 rent.

The Landlord submitted that he began to advertise the rental unit as soon as possible and when nothing was happening with the free internet sites he listed his advertisement

on a paid website on December 14, 2014, as per the invoice he submitted into evidence for \$30.37.

The rental unit was re-rented effective February 1, 2015. The Landlord testified that he was not able to re-rent the unit for the same rental amount of \$1,900.00. In order to reduce his overall loss the Landlord agreed to lower the rent to \$1,800.00 and was able to rent the unit for the remaining nine months of the Tenants' fixed term at that rate.

The Tenants were required to pay the cost of utilities as per the tenancy agreement, as provided in the Landlords' documentary evidence. The Landlord asserted that the Tenants had paid the hydro bill; however, a balance of \$46.95 was payable to the natural gas company after the Tenants called on December 14, 2014 to cancel the natural gas service. A copy of the natural gas invoice was provided in evidence.

The Landlord now seeks to recover the following losses: \$1,900.00 loss of January 2015 rent; \$900.00 for loss of rent for the period of February 1, 2015 to October 31, 2015 (9 months x \$100.00); \$46.95 natural gas; and \$35.00 advertising fees.

The Tenant testified that the Landlord began to show the unit and bring people by while they were still residing in the rental unit. He argued that he was not given an opportunity to lease out the rental unit as he was told he had to remove his advertisements.

Upon further clarification the Tenant clarified that he want to attempt to re-rent the unit after he had vacated the unit and returned the keys to the Landlords. When asked how he would show the unit after he returned the keys, he sated it was an issue he had with the rental company the Landlords had hired, as they were insistent on being the ones to show the unit.

The Tenants made application on June 10, 2015, to seek an order to be allowed to assign or sublet the rental unit, which was six months after they vacated the rental unit. The Tenants did not serve the Landlords with a written request to assign or sublet the rental unit.

The Landlord argued that the Tenants were given full opportunity to show the rental unit until they ended their tenancy by vacating the rental unit. He asserted that the Tenants gave up their right to show the unit once they abandoned it. The Landlords submitted that had the Tenants paid their January 2015 rent in full they would have remained in possession of the unit and would have had the entitlement to try and re-rent or show the unit. That was not the case as the Landlord regained possession as of December 23, 2014 when he picked up the keys from the locked box.

The Tenant argued that he was told to remove his advertisements on December 29, 2015 even though his rent was paid in full to December 31, 2015.

Analysis

The *Residential Tenancy Act* (the *Act*), the *Regulation*, and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) stipulate provisions relating to these matters as follows:

Regarding the End of Tenancy

Section 45 (2) of the Act stipulates that 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 44(1)(d) of the *Act* stipulates that a tenancy ends on the date the tenant vacates or abandons the rental unit.

Regarding Permission to Sublet

Section 34 of the Act provides for assignment and subletting as follows:

- (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.
- (2) If a fixed term tenancy agreement is for 6 months or more, the landlord must not unreasonably withhold the consent required under subsection (1).
- (3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

Regarding the Monetary Award

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. 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.
- 7(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.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 72 (2)(b) provides that if the director orders a tenant to a dispute resolution proceeding to pay any amount to the landlord, including an amount under subsection (1), the amount may be deducted from any security deposit or pet damage deposit due to the tenant.

Regarding Filing Fee

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Landlords' Application

The undisputed evidence was the Tenants ended their fixed term tenancy in breach of section 45(2) of the *Act*. The Tenants gave written notice on December 6, 2014 and vacated the property by December 18, 2014, which was ten months prior to the end of the fixed term of November 1, 2015..

The Landlord picked up the keys and regained full possession of the rental unit on December 23, 2014 after receiving the Tenants' text message that they had vacated the unit. Therefore, I find this tenancy ended on **December 23, 2014**, pursuant to section 44(1) of the *Act*. That being said, this tenancy ended in breach of section 45(2) of the *Act*; therefore, the Tenants still had a legal obligation to the tenancy agreement.

I conclude that the Landlord mitigated his losses, as required by section 7(2) of the *Act*, by attempting to re-rent the unit as soon as possible. He further mitigated his losses by reducing the rent by \$100.00 per month in order to secure a new tenant as soon as possible.

Despite the Landlords' success in re-renting the unit they still suffered a loss of rent as a result of the Tenants' breach of the *Act*. Accordingly, I grant the Landlords' application

for loss of rent of \$1,900.00 for January 2015 plus \$900.00 for the remaining ten months for a total amount of **\$2,800.00**, pursuant to sections 7(1) and 67 of the *Act*.

I accept the Landlords' submissions that he needed to take further action to re-rent the unit by paying for an advertisement on a rental site when the free websites were not generating prospective tenants. This action was taken to mitigate further losses as required by section 7(2) of the *Act*. Accordingly, I grant the Landlords' application for advertisement fees in the amount of **\$35.00**, pursuant to sections 7(1) and 67 of the *Act*.

The undisputed evidence was the Tenants were required to pay the natural gas utilities as per their tenancy agreement. The Tenants failed to pay the natural gas bill in the amount of \$46.95 for services up to December 31, 2014, in breach of their tenancy agreement. Accordingly, I find the Landlords submitted sufficient evidence to prove their claim for natural gas charges, and I grant their application in the amount of **\$46.95**, pursuant to sections 7(1) and 67 of the *Act*.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the *Act*.

Monetary Order – I conclude that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit and pet deposit plus interest as follows:

Loss of Rent	\$2,800.00
Advertising fees	35.00
Natural Gas Utility	46.95
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,931.95
LESS: Pet Deposit \$50.00 + Interest 0.00	-50.00
LESS: Security Deposit \$1,500.00 + Interest 0.00	<u>-950.00</u>
Offset amount due to the Landlords	<u>\$1,931.95</u>

Tenants' Application

The Tenants made application to seek an order to be authorized to assign or sublet a rental unit ten months after they rescinded possession and ended their tenancy. The Tenants did not put their request to assign or sublet in writing, as required by section 34 of the *Act*.

Although the Tenants still had a legal obligation to the tenancy agreement, they had no entitlement to possession once they returned possession to the Landlords and stopped paying their rent. Therefore, I find the Tenants application to be meritless and it is dismissed, without leave to reapply.

Conclusion

The Landlords have been successful with their application and were awarded monetary compensation in the amount of \$2,931.95 which was offset against the Tenants' security and pet deposits leaving a balance owed to the Landlords of \$1,931.95.

The Landlords have been issued a Monetary Order in the amount of **\$1,931.95**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The Tenants' request for monetary compensation was dismissed, with leave to reapply.

The balance of the Tenants' application was dismissed in its entirety, without leave to reapply.

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 21, 2015

Residential Tenancy Branch

