



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remax Property Mgmt
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, MNR, FF

Introduction

This hearing was convened as the result of the landlords' application for dispute resolution under the Residential Tenancy Act ("Act"). The landlords applied for authority to keep all or part of the tenants' security deposit and pet damage deposit, for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation and unpaid rent, and for recovery of the filing fee paid for this application.

The landlord's agent (hereafter "landlord") and tenants attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter the participants were provided the opportunity to present their evidence orally, to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure ("Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and procedural matter-

The evidence was discussed near the beginning of the hearing. The tenants confirmed receiving the landlord's original evidence and the landlord confirmed receiving the tenants' evidence. The landlord sent in additional documentary evidence, which was received by the Residential Tenancy Branch ("RTB") on October 27, 2015, 7 days prior to the hearing. The landlord confirmed not sending the tenants/respondents a copy of the evidence.

In considering whether to accept the landlord's additional evidence, I relied upon 2.5 of the Rules, which states that to the extent possible, the applicant must submit with their application all documentary and digital evidence to be relied upon at the hearing. The

application and the evidence then must be served on the other party within 3 days of the hearing package being made available to the applicant by the RTB. In this case, the landlord's additional evidence was filed approximately 5 months after filing their application, and not at all to the respondents.

Due to the above, as provided for in 3.11 of the Rules, I decline to accept the landlord's additional evidence, not submitted with their application as I find the landlord unreasonably delayed service of their evidence for nearly 5 months and the week prior to the hearing. I also determined that to accept the landlord's late evidence not served on the other party would result in a breach of the principles of natural justice, under Rule 3.12.

The hearing proceeded with the original documentary evidence submitted by the landlord with their application, the tenants' documentary evidence, and the parties' oral evidence.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the landlords entitled to keep the tenants' security deposit and pet damage deposit, further monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

This tenancy began on September 16, 2014, for a fixed term through June 30, 2015, monthly rent was \$1400.00 and the tenants paid a security deposit and pet damage deposit of \$700.00 each. The tenancy actually ended on January 31, 2015, when the tenants vacated the rental unit. The landlord submitted a copy of the written tenancy agreement.

The landlords have retained the tenants' security deposit and pet damage deposit.

The landlords' monetary claim is loss of rent revenue for February, March and part of April 2015 in the amount of \$3546.67, lawn care for \$175.00, natural gas for \$11.43, hydro for \$190.20, and the filing fee of \$50.00.

As to the landlord's claim for loss of rent revenue February, March and a part of April 2015, the landlord submitted that the tenants provided notice on December 27, 2014, that they were vacating the rental unit at the end of January 2015, earlier than the fixed

term in the tenancy agreement. The landlord submitted further that they advertised the rental unit once on December 19, 2014, in the local newspaper, and then again on February 2, 2015, but were not successful in finding new tenants or selling the home until mid-April, 2015. The landlord contends that the tenants are responsible for loss of rent revenue due to the tenants' failure to comply with their fixed term agreement.

The landlord confirmed that the residential property was for sale during the tenancy, but that the for-sale sign was removed. The landlord confirmed that the home was for sale after this tenancy ended.

As to the landlords' claim for the other claimed expenses, the tenant submitted an invoice for \$175.00, dated March 30, 2015, a gas bill in the name of an unknown party, for service from March 16 through April 15, 2015, and a hydro bill for a billing date of April 10, 2015.

Tenants' response-

The tenants submitted that the landlord failed to remove the property from the sales market, despite being told by the landlord's agent that the home would be de-listed for the first 6 months of the tenancy, causing stress. Additionally, the tenants submitted that there was a flood in the basement floor, causing major damage, inconvenience and loss of services and use of part of the rental unit, enough so that they felt compelled to end the tenancy early.

The tenants submitted a copy of the real estate listing.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

As to the issue of loss of rent for February, March and part of April 2015, Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord

written notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and 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.

In other words, the tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term.

In the case before me, I accept that the tenants provided insufficient notice that they were ending the fixed term tenancy agreement prior to the end of the fixed term and I find the tenants were responsible to pay monthly rent to the landlords until the end of the fixed term, here, June 30, 2015, subject to the landlords' requirement that they take reasonable measures to minimize their loss as required by section 7(2) of the Act.

In this instance, I find the landlords failed to submit sufficient evidence that they took reasonable steps to mitigate their loss of unpaid rent. I reached this conclusion due to the landlords' failure to actively market or advertise the rental unit. There was one advertisement in December 2014 and not another advertisement until the tenancy had ended. I would expect that the landlord would make frequent attempts in January 2015 in order to ensure new tenants by the end of January 2015. The landlord has available free, online advertising sites at their disposal.

Overall, I was not convinced by the landlords' evidence that they had taken reasonable measures to minimize their loss, with the lack of advertising in the last month of the tenancy.

I therefore find the landlords submitted insufficient evidence that they have complied with section 7(2) of the Act, step 4 of their burden of proof, and I dismiss their monetary claim for loss of rent revenue for February, March, and part of April 2015, in the amount of \$3546.67.

As to the landlords' remaining claims, in reviewing the invoices and billing submitted, the claimed costs were for services provided well after the tenancy ended on January 31, 2015. I do not find the landlords provided a clear explanation of a claim against the tenant for utilities and a service incurred after the tenants vacated the rental unit. In my view, the landlord appeared to be holding the tenants responsible for costs of upkeep while the property was listed for sale.

I find the landlords submitted insufficient evidence to support that the tenants were responsible for these post tenancy expenses, and I there dismiss their claim for hydro, gas and lawn care, without leave to reapply.

I likewise dismiss the landlords' request for recovery of their filing fee.

As I have dismissed the landlords' monetary claim in its entirety, I order that the landlord return the tenants' security deposit and pet damage deposit of \$700.00, immediately.

To give effect to this order, I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of their security deposit of \$700.00 and their pet damage deposit of \$700.00, which is enclosed with the tenants' Decision.

Should the landlords fail to pay the tenants this amount without delay, the monetary order must be served upon the landlord for enforcement, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlords are advised that costs of such enforcement are recoverable from the landlords.

Conclusion

The landlords' application is dismissed, without leave to reapply.

The landlords are ordered to return the tenants' security deposit of \$700.00 and pet damage deposit of \$700.00, immediately, and the tenants are granted a monetary order in the amount of \$14000.00 in the event the landlords do not comply with this order.

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: November 20, 2015

Residential Tenancy Branch

