Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MND, MNSD, OLC, FF

Introduction

This was a cross-application hearing.

The landlord applied requesting compensation for damage to the rental unit, damage or loss under the Act, to retain the security deposit and to recover the filing fee costs from the tenants.

The tenants applied requesting compensation for damage or loss under the Act, requesting return of double the security deposit, an Oder the landlord comply with the Act and to recover the filing fee cost from the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The parties confirmed receipt of each other's applications and evidence within the applicable time limits.

The landlord served the male tenant with the application, via registered mail to the address given by the tenant, on September 12, 2015. I find, pursuant to section 90 of the Act that the application was given to the male tenant on the fifth day after mailing; September 17, 2015.

The landlord served the male tenant with the evidence sent via registered mail on January 26, 2016. The landlord checked the Canada Post web site and established

that the evidence was received by the tenant on January 27, 2016. Therefore, I find the tenant received the evidence within the applicable time limit.

The tenant confirmed that their application requested return of double the security deposit paid. There was no other monetary claim.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of $2,676.83 for damage and as damage or loss under the Act?

May the landlord retain the security deposit in partial satisfaction of the claim?

Are the tenants entitled to return of double the security deposit?

Background and Evidence

The tenancy commenced on May 1, 2014 as a fixed-term to September 30, 2015. Rent was $1,450.00 per month. The parties agreed that the tenants vacated on September 6, 2015. A copy of the tenancy agreement was supplied as evidence.

The landlord provided a copy of a previous decision issued on August 27, 2015 (see cover for file number.) The tenant had disputed a one month Notice ending tenancy for cause. The Notice was upheld and the tenants were order to vacate the rental unit based on the Notice issued on June 15, 2015. The Notice had an effective date of July 31, 2015.

A copy of the move-in and move-out condition inspection report was supplied as evidence. On September 5, 2015 the tenant signed the inspection report agreeing to the cost of door repair; a specific sum was not included on the report. The tenants forwarding address was provided on the inspection report.

Within 15 days the landlord submitted a claim against the security deposit as follows:

Bi-fold door repair	$73.50
Bi-fold door	49.27
Loss of rental income September 6 – 30, 2015	1,208.33
Unjust enrichment by tenants	1,320.00
Lock and keys	53.67
Canada post registered mail	121.68
Filing fee	50.00
TOTAL	$2,876.45

I note the landlord has included mailing costs and the filing fee in his monetary worksheet calculation.

The tenant did not dispute the claim related to door damage.

The landlord said that he advertised the rental unit on a popular web site and that there were three or four showings. The tenant agreed that the unit had been advertised and that they had cooperated with showings during August 2015. The landlord said he was able to locate new tenants effective October 1, 2015. This resulted in a loss of rent revenue for the last month of the fixed-term tenancy. The landlord advertised the rental unit for rent of $1,500.00; not the $1,450.00 the tenants had been paying.

The tenant said she went to the rental unit in mid-September. There was vehicle in the driveway and a light was on in the kitchen. The tenant rang the doorbell, but no one answered. The tenant said that the landlord had rented the unit out by September 15, 2015 and that he has made a false statement claiming that it was not rented until October 1, 2015.

There was no dispute that the tenants request to rent out the unit via a popular on-line home renting site was denied by the landlord. The tenants filed for dispute resolution requesting an Order allowing sublet. The landlord attended that hearing; the tenants' were not at their hearing and the application was dismissed. The August 27, 2015 decision set out these details. At the August 27, 2015 hearing it was found that the tenants proceeded to sublet the unit without written consent or an Order.

The tenant did not dispute that the unit was rented on three occasions, without permission of the landlord. The tenants went on vacation and wanted to supplement their rent payments. The tenant said that there is no jurisdiction under the Residential Tenancy Act to support a claim for unjust enrichment.

The landlord has claimed the sum he believes the tenants made when the rental unit was rented out. The landlord believes that since he was paying utility costs and provided the unit the tenants should not be able to benefit and that any benefit should flow to the landlord.

The landlord has claimed the cost of a new lock and keys for the unit. Since the tenants gave keys to unidentified parties the landlord wanted to ensure the security of the unit. Receipts for these items were supplied.

The tenant said that she did not think replacing the lock and obtaining new keys was necessary. The people who rented are from out of the country. The landlord had not replaced their keys when the neighbours lost their set of keys.

Analysis

I find, based on the decision issued on August 27, 2015, that this tenancy ended effective July 31, 2015. After that date the tenants over-held and the landlord was entitled to per diem rent for each day the tenants occupied the rental unit.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act and proof that the party took all reasonable measures to mitigate their loss.

Based on the agreement of the tenant I find that the landlord is entitled to the sum claimed for repair of the door.

The tenancy ended as a result of a Notice ending tenancy which was disputed by the tenants. The landlord was unable to rent the unit effective September 1, 2015 as the tenants remained in the rental unit beyond that date.

A claim for loss of rent revenue is meant to put the landlord in the same positon as if the tenants had not breached the terms of the tenancy agreement. There is a previous finding that ordered the tenancy to end as the result of a Notice ending tenancy. The tenants had breached the Act, causing the tenancy to end. The landlord advertised the rental unit at a rent that was $50.00 more that the tenants had paid.

The sum sought as rent by the landlord for the last month of the fixed-term tenancy was more than what the landlord could expect to recover the tenants. Therefore, I find that the landlord is entitled to compensation for one half of September 2015 rent revenue in the daily sum of $47.67 for 15 days. This compensation recognizes the loss of rent that could not have been prevented by the landlord as the tenants over held into September 2015. It is not reasonable to expect the landlord could have located new tenants prior to September 15, 2015. I find that it is reasonable to expect that if the unit had been advertised at the same level of rent paid during the tenancy that a tenant could have been more easily found for September 15, 2015. The landlord was able to find a tenant for October 1, 2015, at the higher advertised rent. This sum takes into account the days the tenants over held into September. The balance of the claim for loss of rent revenue is dismissed.

The landlord has made a claim for the loss of income that landlord believes should have been to his benefit, not the tenants. Section 67 of the Act provides:

> ***67*** *Without limiting the general authority in section 62 (3)* [director's authority respecting dispute resolution proceedings]*, 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*

As explained during the hearing, the Act does not contemplate a claim for anything outside of a loss incurred as the result of a failure to comply with the legislation. A claim for a loss, for what could have been income by the landlord is not supported. Therefore, jurisdiction for the claim related to unjust enrichment is declined.

I find that as a result of bringing unknown renters into the rental unit; in the absence of approval by the landlord, that the tenants potentially affected the security of the home. I find that the replacement of the lock and plkeys was a reasonable expense, required to provide the new tenants with necessary security. Therefore, as the tenants breached the Act by subletting and sharing keys, this portion of the claim is accepted in full.

The landlord has claimed the cost of registered mail. An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act. Costs incurred with respect to filing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. Therefore, I find that the claim for registered mail is dismissed.

As the landlord's application has merit I find that the landlord is entitled to recover the $50.00 filing fee from the tenants.

Therefore, the landlord is entitled to the following compensation:

	Claimed	Accepted
Bi-fold door repair	$73.50	$73.50
Bi-fold door	49.27	49.27
Loss of rental income September 6 – 30, 2015	1,208.33	715.05
Unjust enrichment by tenants	1,320.00	0
Lock and keys	53.67	53.67
Canada post registered mail	121.68	0
Filing fee	50.00	50.00
TOTAL	$2,876.45	$941.49

The tenants gave the landlord their written forwarding address on September 5, 2015, when the inspection report was signed. Within six days the landlord applied claiming against the deposit. Therefore, I find that the landlord complied with section 38(1) of the Act and that the deposit should not be doubled.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of $710.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of $231.49. 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.

The tenants' application is dismissed.

Conclusion

The landlord is entitled to compensation as set out above.

The claim for loss related to unjust enrichment is declined as the Act does not apply.

The landlord may retain the security deposit in partial satisfaction of the claim.

The landlord is entitled to filing fee costs.

The tenants' application is dismissed.

This decision is final and binding and 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: March 15, 2016

Residential Tenancy Branch