



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for compensation for loss or damage under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on December 17, 2015. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants absence.

Issues(s) to be Decided

1. Is there a loss or damage under the Act, regulations or tenancy agreement and if so how much?
2. Is the Landlord entitled to compensation for the loss or damage and if so how much?

Background and Evidence

This tenancy started on November 1, 2014 and then was renewed for a fixed term of November 1, 2015 to October 31, 2016. Rent was \$1,281.25 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$625.00 on October 23, 2014. The Landlord said on December 16, 2015 the Tenant gave written notice to move out of the rental unit on December 31, 2015. The Landlord said the tenancy ended on December 31, 2015. The Landlord said this was a fixed term tenancy agreement until October 31, 2016; therefore the Tenants broke the tenancy agreement by moving out early.

The Landlord continued to say that she thought the application was amended in May, 2016 when the Landlord found new tenants for the rental unit. The Arbitrator said there were no amendments in the file, but he would check the data base. The Arbitrator said there were no entries in the data base after December 21, 2015.

The Landlord said they thought the application was changed to just the rent for the time period the unit was empty in the amount of \$7,238.80 and to retain the Tenants' security deposit of \$625.00. The Landlord said their adjusted claim was for \$6,661.80.

The Arbitrator asked the Landlord for information on how they tried mitigated their potential rental loss. The Landlord said their head office advertised the unit and the Landlord T.C. showed the unit a number of times. The Landlord T.C. said she could not remember the number of showing or when the showings were but she could get that information in time. The Landlord continued to say they did not include this information because they did not know it was required. Further the Landlord did not include a monetary work sheet to show how the Landlord's claim was calculated.

The Landlord said they rented the unit on May 24, 2016 and they are requesting compensation of \$1,281.25 (the rental amount) for each month of January, February, March and April, 2016 in the amount of $4 \times 1,281.25 = \$5,125.00$. As well the Landlord said she is requesting a prorated amount of \$41.33/ day for 24 days for May, 2016 in the amount of \$991.93. The Landlord said their total amended claim was $\$5,125.00 + \$991.93 = \$6,116.93$ less the security deposit of $\$625.00 = \$5,491.93$.

The Landlord said they are requesting compensation for lost rental income from January 1, 2016 to May 24, 2016 because the Tenants broke the fixed term tenancy agreement.

Analysis

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45 of the Act says a Tenant may end a fixed term tenancy not earlier than the date specified in the tenancy agreement and it must be with written notice at least one month prior to the date that rent is payable or with the agreement of the Landlord.

The Tenants did not give the Landlords proper notice to end the tenancy and the Tenants do not have the right under the Act to withhold part or all of the rent; therefore I find the Tenants are responsible for the rent by breaching the tenancy agreement.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and **the applicant must show how they mitigated or minimized the loss.**

I accept the Landlord's affirmed testimony that the unit was rented on May 24, 2016 and that the Landlord has experienced a rental loss due to the Tenants breaching the tenancy agreement. Further it is the Landlord's responsibility to prove their claims and to prove how the Landlord tried to mitigate the loss or damage pursuant to section 7.2 of the Act. The Landlords gave affirmed testimony that their head office advertised the rental unit and the Landlord T.C. showed the rental unit, but were unable to say how many times it was shown or when it was advertised and what the terms of the advertising were. The Landlord did not provide any

corroborative written evidence to support the advertising or showing of the rental unit to minimize the Landlord's loss. Therefore it is unclear if the Landlord made their best effort to try to minimize the rental loss caused by the Tenants breaching the tenancy agreement. On reviewing the evidence and the affirmed testimony and on the balance of probabilities; I find the Landlord has established grounds for lost rental income for two months in the amount of $\$1,281.25 \times 2 = \$2,562.50$ and I will accept the Landlord's request to include the security deposit in this application.

As the Landlord has been partially successful in this matter, the Landlord is also entitled to recover from the Tenant the \$100.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38 and s. 72 of the Act to keep the Tenants' security deposit in partial payment of lost rental income. The Landlord will receive a monetary order for the balance owing as following:

	Lost rental income:	\$ 2,562.50
	Recover filing fee	\$ 100.00
	Subtotal:	\$2,662.50
Less:	Security Deposit	\$ 625.00
	Subtotal:	\$ 625.00
	Balance Owing	\$ 2,037.50

Conclusion

A Monetary Order in the amount of \$2,037.50 has been issued to the Landlord. A copy of the Order must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 11, 2016

Residential Tenancy Branch