



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND, FF

Introduction

This matter dealt with an application by a landlord compensation for the costs of repairs to the unit and loss of revenue incurred by the landlord after the end of the tenancy. Both the landlord and tenant attended the conference call hearing.

Issues(s) to be Decided

Is the Landlord entitled to compensation and if so, how much?

Background and Evidence

Service of the application was admitted.

Based on the evidence of the landlord I find that this month-to-month tenancy started on May 1, 2015 and ended on November 5, 2015 when the tenant moved out. Pursuant to the tenancy agreement, the rent was \$ 3,900.00 per month payable in advance on the 1st day of each month. The tenant paid a security deposit of \$ 1,950.00 and pet deposit of \$ 1,950.00 on April 10, 2015.

The landlord admitted that he failed arrange an exact date to conduct a move out inspection with the tenant and conducted one without the tenant on November 24, 2015.

The tenant testified that he did not provide the landlord with his forwarding address as his mailing address was always the same and had not changed: a PO Box number. The tenant submitted that as the landlord had not arranged a mutually convenient date and conducted a move out inspection in his absence that the landlord's right to claim against the security deposit was extinguished and that therefore the tenant is entitled to recover double the security deposit which must set off as against the landlord's claim.

The landlord testified that the tenant's notice to end the tenancy was dated October 15, 2015,, e was to be effective on November 5, 2015 and he received it by mail on November 10, 2015. The landlord began looking for new tenants immediately but was only able to re-rent the unit for January 2016 and is therefore claiming the loss of rent for December 2015 amounting to \$

3,900.00. The landlord testified that the tenant did not provide him with his forwarding address and he believed that the PO Box was his work address.

The tenant testified that he mailed a letter dated October 15, 2015 advising the landlord that he intended on moving out on November 5, 2015, enclosing a cheque for rent for November and permitting the landlord to keep his security and pet deposits. He claims the landlord must have received it before November 1, 2015.

The landlord is claiming for the cost of repairing his hardwood floors which are now two years old. He submitted photos depicting large areas of gouging and damage. The landlord submitted a written estimate for the repair amounting to \$ 10,050.00.

The tenant denies that the photos are of the floor of his unit or alternatively alleges that someone else could have damaged the floors as the photos were taken long after he vacated the unit.

Analysis

The tenant raised the issue of extinguishment and the right to recover his security and pet deposits notwithstanding that he did not apply for the recovery of same in this application. In this application the landlord did not apply to retain any of the deposits. I can apply section 72 of the Act and set off any amount paid in deposits against any sum due to the landlord. However I find here that the tenant has in a letter dated October 15, 2015 agreed in writing that the landlord may retain the deposits before the end of the tenancy and the landlord has not claimed against the deposits. Accordingly I will not be dealing with the issue of the security or pet deposits as they are not properly before me in this matter.

Regarding the claim for loss of revenue the tenant submits that the landlord must have received his letter dated October 15, 2015 before November 1, 2016. However he has no knowledge of that nor did he testify exactly when he mailed it. I accept the landlord's evidence that he received the letter on November 10, 2015. That letter enclosed a cheque for November's rent and advised the landlord that the landlord may retain the deposits and that the tenant will be moved out by November 5, 2015. Section 45 of the Act provides as follows:

- 45** (1) A tenant may end a periodic 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, and
 - (b) 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.

Even if the tenant's letter dated October 15, 2016 giving notice was effective for the end of November, it was not be in compliance with section 45 of the Act, as I have found it was

received by the landlord on November 10, 2015. Accordingly I find that as the notice to end the tenancy was defective the landlord has a right to claim for the loss of revenue for the month of December. I accept the landlord's evidence that he was unable to find a new tenant until January 2016 and lost revenue amounting to \$ 3,900.00 for December 2015.

I reject the tenant's evidence that the photos were of another floor or that someone else damaged the floors as speculative, illogical and defying common sense. Accordingly I accept the landlord's evidence that the damage was not present at the beginning of the tenancy as supported by the move in inspection report signed by the tenant on May 2, 2015. The flooring was two years old at the end of the tenancy. Policy Guideline 40 of the Policy Guidelines pursuant to the Residential Tenancy Act prescribes that the life expectancy of hardwood flooring is twenty years. The landlord's estimate for repair is \$ 10,050.00. I deduct 10 % of that pursuant to the Policy Guidelines and allow recovery of the amount of \$ 9,045.00.

I find that the landlord has proven a claim totalling \$ 12,945.00. As the landlord has been successful in this matter, I find pursuant to s. 72 of the Act that he is also entitled to recover the \$ 100.00 filing fee for this proceeding. However the landlord only claimed a total amount of \$ 10,796.00 in his Application for Dispute Resolution. Accordingly I reduce his entire claim to that amount.

Conclusion

In summary I ordered that the respondent pay to the applicant the sum of **\$ 10,796.00** in respect of this claim inclusive of the filing fee. I grant the landlord a Monetary Order in the amount of **\$ 10,796.00** and a copy of it must be served on the tenant. If the amount is not paid by the tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: July 19, 2016

Residential Tenancy Branch