Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNDC, MNSD, FF

Introduction

This was a cross-application hearing.

The landlord has requested compensation for unpaid rent, damage or loss under the Act, to retain the security deposit and to recover the filing fee cost from the tenants.

The tenants applied requesting compensation for damage or loss under the Act and return of the security deposit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained 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 each confirmed receipt of the evidence that was supplied by each to the Residential Tenancy Branch (RTB.)

The landlords' claim included $1,900.00 for late rent penalties. This matter was dismissed at the start of the hearing. I explained that the Regulation sets out the fees that may be included in a tenancy agreement. The addendum singed by the parties imposed a daily late rent fee; which is not enforceable as the term is contrary to the Act. I explained that the parties may find the Regulation on the RTB web site.

Issue(s) to be Decided

Is the landlord entitled to compensation for unpaid rent and loss of rent revenue?

Is the landlord entitled to compensation for cleaning costs?

Are the tenants entitled to compensation for work performed at the rental unit?

May the landlord retain the security deposit in partial satisfaction of the claim or are the tenants entitled to return of the deposit?

Background and Evidence

The landlord has made the following claim:

July 2014 rent	$600.00
Loss of August 2014 rent revenue	1,200.00
Loss of September 2014 rent revenue	1,200.00
Cleaning	250.00
Advertising cost	28.85
TOTAL	$3,278.85

The tenants have claimed the cost of repairs and cleaning that they completed for the landlord in the sum of $1,375.00.

A copy of the tenancy agreement supplied as evidence. The agreement indicates this was a fixed-term tenancy that commenced on March 1, 2014 ending March 1, 2015 at which point the tenancy would continue on a month-to- month term. Rent was $1,200.00 per month. The landlord is holding a security deposit in the sum of $600.00. There was no dispute that the female tenant (referred to V.B.S.) moved into the rental unit approximately one week prior to the start date of the tenancy that was indicated on the tenancy agreement.

The female tenant signed the tenancy agreement before the male tenant; who signed several weeks later. The signature page of the tenancy agreement indicates the landlord signed in February 2014. There is no date recorded next to the tenant's signatures. The addendum is not signed by either party.

V.B.S. entered the hearing shortly after the hearing commenced and was affirmed. V.B.S. said that when she signed the tenancy agreement page two did not have any dates indicated in the section that sets out the length of tenancy terms. V.B.S. then said that when she was given a copy of the tenancy agreement she marked the tenancy as a month-to-month term. She then testified that in fact the agreement supplied as evidence was not the document they had signed, as it was completed as a fixed-term.

The landlord stated that the tenancy agreement was fully completed when the tenants each signed. The tenants knew they had a fixed-term agreement. The tenants had been given a copy of the agreement to prove to a government ministry that they were renting. The tenant said they submitted a different form to the ministry and did not have a copy of the tenant agreement until nine days after the female tenant moved into the unit. The tenants did not supply a copy of the agreement they had been given.

There was no dispute that the condition inspection report supplied as evidence and the 11 pages of hand-written notes and drawings were completed by the V.B.S. The tenant said she was given the inspection document and left to complete the report on her own. The report indicates that many areas of the home were not clean and that repairs were required. The landlord later picked up a copy of the report and signed it.

The landlord said he was with the tenant when she completed the report, but that the hand-written notes were made at another time. The landlord confirmed that the tenant did complete the report, but he signed it.

The parties agreed that the landlord allowed V.B.S. to clean the rental unit and that she was paid $50.00 by way of a cheque issued on February 28, 2014.

There was no dispute that at the end of the tenancy the tenants did not supply a written forwarding address to the landlord. The landlord discovered where the tenants were living by following them to their new rental unit. He was then able to establish the unit number they lived in and successfully served the hearing documents to that address.

The landlord said that he received rent via cheques issued directly to him by a government ministry. He received only $600.00 in July 2014. The landlord submitted copies of each payment receipt for rent paid during the tenancy. The receipts are in the name of the male tenant and show payments of $1,200.00 per month with the exception of July 2014, which was in the sum of $600.00.

The landlord went to the rental unit on August 2, 2014 and discovered the tenants had removed their furniture. On August 2, 2014 the landlord posted a note to the rental unit door asking the tenants to attend a move-out inspection on August 3 or 5, 2014; specific times were provided. The tenants did not attend on either date. A copy of the note was submitted as evidence.

The landlord supplied a copy of notice of final opportunity to schedule a condition inspection that was posted to the rental unit door on August 5, 2014. The inspection was scheduled for August 8, 2014. The tenants did not attend. The landlord then took possession of the rental unit.

The landlord said that he listed the rental unit for rent, with the same terms. A copy of an invoice issued on August 20, 2014 was supplied as evidence of advertising in the local newspaper. The ad ran from August 8 to 20, 2014. The landlord also advertised on a web site. New tenants were located for September 15, 2014. The landlord has claimed the loss of rent revenue for August and September, 2014.

The landlord supplied an undated cleaning invoice in the sum of $250.00. The invoice includes a reference to garbage removal costs incurred on August 6 and 7, 2014. When questioned, the landlord confirmed that the cleaner was in the home during the period of time the inspections were scheduled. The landlord supplied a copy of a cheque issued on August 31, 2014 for cleaning payment. The cheque has a small correction on the month; the tenants suggested the cheque had been altered.

The tenants said they did not vacate the rental unit until mid-August and that they did not see any notices the landlord said he had posted on the door. The tenants were not aware of the notice requesting an inspection and said that a cleaner was not in the unit while they were living there.

The tenants confirmed that they did not pay $600.00 rent in July and August 2016 rent.

The tenants have made a claim for cleaning and work completed on the property. They expected to be paid for this work and would have accepted a rent reduction. The agreement for work was not put in writing.

The landlord responded that he did pay the tenant for cleaning that had been completed at the start of the tenancy. The tenant cashed the cheque and never said another word about further payment until the landlord filed his application for dispute resolution.

The tenants submit that throughout the tenancy the landlord harassed them and as a result they vacated the unit. The tenants said that the landlord told them he had located a wealthy couple who were ready to move into the unit within a few days, so the tenants could leave at any time.

The tenants' written submission indicates the tenancy was to commence on February 1, 2014. The tenants submit that on February 7, 2014 the landlord forced his way into the rental unit. The landlord pointed out that the tenancy did not commence until the date the tenants took possession during the final week of February 2014.

The tenants stated that the landlord would come to the rental unit unannounced and demand the next months' rent. The landlord said that rent was paid to home directly and that he had no need to go to the rental unit until August 2014 when rent had not been paid. The neighbours who also rent from the landlord caused disturbances and the landlord repeatedly arrived at the rental unit to make demands.

The tenants' written submission contained allegations regarding the landlords' behavior, having occurred in "late April" and "July" and "early August." The landlord said if the tenants had provided specific dates in their written submission he could have compared those dates to his work schedule. The landlord works out of town for periods of 15 days and is home for six days. The landlord would then have been able to prove he was not likely even in town when the tenants allege he was harassing them.

The tenants stated that the behavior of the landlord caused them to vacate the rental unit and they did so with his permission.

Analysis

First I will reference the tenants' submission as a whole. I found the written submission contradicted fact; for example, the female tenant moved into the rental unit in the last week of February 2014. However, the written submission contradicted this, stating the tenancy commenced February 1, 2014. The tenants alleged the landlord forced his way into the rental unit on February 7, 2014 when the tenancy had not even begun. These contradictions lead me to find on the balance of probabilities that the landlord's evidence is more reliable and provided a more accurate record of the events that occurred during this tenancy.

I also found the tenants made general accusations without providing the landlord with the benefit of dates the alleged disturbances occurred. As a result I have given those allegations no weight.

I find that the tenants signed a tenancy agreement that was a fixed-term tenancy and that the tenants ended the tenancy in breach of section 45 of the Act. The tenants' submission regarding the details of the term of the tenancy agreement was inconsistent leaving me to conclude, on the balance of probabilities, that when the tenants signed the agreement it included the fixed tenancy term details.

Section 45(2) of the Act provides:

Tenant's notice

(2) 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.

(3) ***If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.***

(4) A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].

(Emphasis added)

There was no evidence before me that the landlord had failed to comply with a material term of the tenancy. I have determined there was no harassment or loss of quiet enjoyment proven by the tenants. The tenants did not give the landlord any written notice to end the tenancy, they simply vacated. I found the tenants' submission that the landlord had wealthy people waiting to move into the rental unit was unsubstantiated.

Pursuant to section 44(f) of the Act I find that the tenancy ended on August 2, 2014; the date the landlord discovered the tenants' furniture was found to have been removed from the unit. I have rejected the tenants' submission that they were in the rental unit until mid-August. I find that the cheque issued to the cleaner and the advertising invoice support the landlords' submission that the tenants had vacated by August 2, 2014. However, this does not negate the fact that the landlord took reasonable steps to schedule a condition inspection. The landlord had not assumed the tenants had vacated.

I have considered the claim for cleaning costs and find that the landlord is entitled to reasonable compensation in the sum of $50.00 for garbage removal. There was no evidence before me of the state of the home at the end of the tenancy that proved the tenants did not leave the unit reasonably clean, as required by the Act. The balance of the claim for cleaning is dismissed.

I find that the landlord is entitled to compensation in the sum of $600.00 for July 2014 rent. The tenants confirmed this sum was not paid.

I find the landlord made attempts to mitigate the loss of rent by immediately placing an ad in the newspaper and that the unit was rented again within a reasonable period of time. Therefore, as the tenants' breached the Act when they moved out of the rental unit I find that the landlord is entitled to compensation in the sum of $1,800.00 for loss of rent revenue from August 1 to September 15, 2014, inclusive.

As the landlord incurred advertising costs that would not otherwise have been experienced during the fixed-term tenancy I find that the landlord is entitled to advertising costs as claimed.

In relation to the tenants' claim for compensation for work completed on the rental unit I find that this matter does not fall within the jurisdiction of the Act. The parties confirmed that there was no written agreement for work to be completed that formed part of the terms of the tenancy agreement. Any work completed outside of the tenancy agreement would form an employment relationship. RTB policy suggests that the Act does not confer the authority to hear all disputes regarding every type of relationship between parties. The RTB only has the jurisdiction conferred by the Act over landlords and tenants.

Therefore, I find the landlord is entitled to the following compensation:

	Claimed	Accepted
July 2014 rent	$600.00	$600.00
Loss of August 2014 rent revenue	1,200.00	1,200.00
Loss of September 2014 rent revenue	600.00	600.00
Cleaning	250.00	50.00
Advertising cost	28.85	28.85
TOTAL	$2,678.85	$2,478.85

The balance of the landlords' claim is dismissed.

As the landlord's application has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the $100.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

I find that the tenants did not supply the landlord with a written forwarding address within one year of the end of the tenancy. Therefore, pursuant to section 39(b) of the Act I find that the tenants' right to claim return of the security deposit is extinguished and their claim is dismissed.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of $350.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of $2,228.85. 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.

Conclusion

The landlord is entitled to compensation as set out above in the sum of $2,478.85.

The claim for penalties is dismissed.

The landlord is entitled to retain the security deposit.

The landlord is entitled to filing fee costs.

Jurisdiction is declined on the tenants' application for compensation.

The tenants' right to request return of the security deposit is extinguished and 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: August 31, 2016

Residential Tenancy Branch