



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlords' application for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and the landlord VW attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlords and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords entitled to a Monetary Order for damage to the unit?

- Are the landlords permitted to keep all or part of the security and pet deposits?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on November 15, 2015 for a fixed term tenancy that was due to end on November 15, 2016. The tenancy ended on or before June 06, 2016. Rent for this unit was \$1,000.00 per month due on the first of each month. The tenant paid a security deposit of \$500.00 and a pet deposit of \$500.00 on November 15, 2016.

VW testified that the tenant did not provide sufficient notice to end the tenancy. The tenant was in a fixed term tenancy; however, sent the tenant a text message on May 06, 2016 informing the landlords that the tenant would be moving out on June 01, 2016. The tenant moved out around June 03, 2016. VW testified that they had to do some work in the unit due to damage caused by the tenant and were unable to re-rent the unit until June 25, 2016 after adverts were placed on internet and social media sites. The landlords seek to recover a loss of rental income for June, 2016 of \$1,000.00.

VW testified that there was a shower cubicle in the master bedroom. The tenant removed the shower cubical which included taking down a floor to ceiling pony wall. As the landlords had only recently laid new laminate flooring down in that room this left the area under the shower cubicle without any laminate. The landlords had to redo the laminate flooring by taking it up to the wall and then re-laying it to cover the gap caused by the removal of the shower cubical. The landlords seek to recover \$39.18 for the extra laminate flooring and \$22.39 for the underlay. The landlord RB laid the flooring but the landlords do not have a monetary value for his labour.

The landlords seek an Order to be permitted to keep the security and pet deposit in partial satisfaction of their claim. The landlords also seek to recover their filing fee of \$100.00 from the tenant.

The tenant testified that she did understand that she was in a fixed term tenancy but prior to giving notice VW told the tenant that she did not expect her to stay for longer than six months. The tenant started to look for a new place to live and found somewhere on May 06, 2016 so sent the landlord a text message immediately. The tenant testified that she actually vacated the rental unit on June 06, 2016 and therefore did provide 30 days' notice.

The tenant agreed that she did remove the shower cubicle in the master bedroom. There was a bad smell in the room which the tenant thought came from this shower cubicle. The landlord had already told the tenant that they would be taking it out in the spring so the tenant took it out as a favour to the landlords. Everything else was repaired in this area except the floor. The tenant testified that they did offer to do the floor but received no response from the landlords.

The tenant testified that she had agreed by text message that the landlords could keep half of the security and pet deposit and felt this was fair as the landlord said the tenant did not have to pay any rent.

VW testified that they had thought about taking out the shower but had no immediate plans to do so as they had only just laid this new flooring. VW testified that she did not agree the tenant did not have to pay rent she only agreed the tenant could break the lease with one month's written notice.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows and refer the parties to s. 45 (1) and 45 (2) of the Act which states:

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.

(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.

Consequently, as the landlords agreed to allow the tenant to break the lease after receiving one months' written notice, I find the tenant failed to comply with the Notice period and failed to put this Notice in writing. The unit was re-rented on June 25, 2016; therefore, the tenant is responsible to pay rent from June 01 to June 24, 2016 to an amount of \$800.00. I allow the landlords claim to recover a loss of rent for June, 2016 but limit this claim to **\$800.00**.

With regard to the landlords' claim for damage to the rental unit; the tenant agreed she did take out this shower cubicle without the landlords' written permission. I find this left the flooring incomplete in this bedroom. The landlords have provided receipts showing

the cost for the materials to replace the flooring in the area of the shower cubicle. I therefore allow the landlords' claim to recover **\$61.57**.

As the landlords' claim has merit I find the landlords are entitled to recover the **\$100.00** filing fee from the tenant pursuant to s. 72(1) of the Act.

I therefore Order the landlord to keep **\$961.57** of the security and pet deposit pursuant to s. 38(4)(b) and 72(2)(b) of the Act. The balance of **\$38.43** must be returned to the tenant.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. As indicated above the landlords may retain **\$961.57** of the security and pet deposits.

A copy of the tenant's decision will be accompanied by a Monetary Order for **\$38.43**. The Order must be served on the landlords. Should the landlords fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: December 14, 2016

Residential Tenancy Branch