



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for authority to retain the tenant's security deposit, a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation and for alleged damage by the tenants to the rental unit, and for recovery of the filing fee paid for this application.

The landlord, their son, and the tenants attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the beginning of the hearing, each party confirmed receipt of the other's evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation allowed under the Act and Residential Tenancy Policy Guideline and to recover the filing fee paid for this application?

Background and Evidence

This tenancy began on June 1, 2018, and monthly rent was \$3,200.00.

The tenants submitted a previous dispute resolution Decision by another arbitrator, which was made on the tenants' application for a return of their security deposit, doubled. In that Decision dated April 29, 2019, the other arbitrator wrote that the parties agreed the tenancy ended on November 30, 2018, the day the tenants moved out of the rental unit.

The other arbitrator granted the tenants' application and awarded the tenants a monetary order of \$3,200.00, double the amount of their security deposit.

In this case, the landlord's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. New exterior spindle window frame	\$1,090.00
2. BC Hydro, Fortis BC, to date vacated	\$472.63
3. BC Hydro, Fortis BC, to end of lease	\$1,009.06
4. Loss of rent income, Dec 1 '18 to Feb 28, '19	\$9,600.00
TOTAL	\$12,171.69

New exterior spindle window frame-

In support of this claim, the landlord submitted that the window broke during the tenancy and the tenants replaced it, but not with the proper type. The landlord submitted that he wanted the original type window, not the ones the tenants used.

In response to my inquiry, the landlord submitted that the work on the window has not been started or the window replaced. In explanation, the landlord submitted that he was waiting for the money from this application.

Tenants' response-

The tenants submitted that they replaced the window and frame during the tenancy.

BC Hydro, Fortis BC, to date vacated-

In support of this claim, the landlord submitted that the tenants were obligated to pay 75% of each monthly bill for both electricity and natural gas, as per the written tenancy agreement. The landlord submitted documentary evidence showing that the tenants owed their prorated bills from August 2018 through November 30, 2018.

The landlord submitted the breakdown and bills for the utilities.

Tenants' response-

The tenants said that this amount was more than usual, but that they may agree with the claim. The tenants also submitted that at the end of the tenancy, they agreed that once the remaining bills were to be paid, the landlord would return their security deposit.

BC Hydro, Fortis BC, to end of lease-

The landlord asserts that the tenants are responsible for the utilities bills from December 1, 2018 through February 28, 2019, the end of the fixed term, per the terms of the written tenancy agreement.

In response to my inquiry, the landlord confirmed that he kept the heating on all during the time the home was vacant.

The landlord also submitted that if I thought the claim was unfair, they would agree to my Decision.

Tenants' response-

The tenants disagreed that they owed for the utilities after they vacated, as the landlord continued to heat the house.

Loss of rent income-

The landlord submitted that the tenants were formerly on a month to month tenancy, but the parties agreed to extend the tenancy through February 2019, by way of a fixed term tenancy agreement. The landlord submitted a copy of the agreement, showing the fixed term was from November 1, 2018 until February 28, 2019.

The landlord submitted further that the tenants were advised that other parties were looking to rent the rental unit, so they should be sure before signing the fixed term agreement. The landlord said that the tenants were required to vacate the rental unit at the end of the fixed term, as the landlord will use the property for their own use, as shown in the tenancy agreement.

Instead of staying until the end of the fixed term, the tenants gave notice of an early end of the tenancy, and vacated after the first month, causing the landlord to lose the rental income for three months, according to the landlord.

The landlord submitted that he made diligent attempts to acquire new tenants for the remainder of the fixed term, but was unsuccessful as it was difficult to find new tenants for a rental unit that would be available for only one or two months. Additionally, the landlord submitted he had difficulty during that time of year, with it being winter and over the holidays.

The landlord confirmed that the home was placed for sale, that he never moved in, and it is still for sale.

In support of this claim, the landlord submitted copies of the listings and inquiries from interested prospective tenants.

Tenants' response-

The tenants' submitted that they spoke with the landlord on November 12, 2018, at which time the landlord said they did not have a problem ending the tenancy as they did not want anyone renting if they did not want to.

The tenants submitted that they wanted the landlord to sign a mutual agreement to end the tenancy, but the landlord refused.

The tenants also submitted they are not responsible for the remaining months of the original fixed term due to a Decision from a previous dispute resolution hearing on their application. In that Decision, which they submitted into evidence, the parties agreed that the tenancy ended on November 30, 2018, when the tenants vacated the rental unit.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

In a claim for damage or loss under the Residential Tenancy Act, Residential Tenancy Branch Regulations or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements, as provided for in sections 7 and 67 of the Act:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to minimize their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

New exterior spindle window frame-

As of the date of the hearing, the landlord has not incurred a loss for window. I also have no proof the landlord will ever suffer a loss, as the home is for sale in the present condition.

I therefore dismiss the monetary claim of \$1,090.00 for a damaged window.

BC Hydro, Fortis BC, to date vacated-

I find that the tenants owed 75% of the electricity and natural gas bills through the time they vacated the rental unit, by the terms of the written tenancy agreement.

I find the landlord submitted sufficient evidence to verify the amount owed and I approve their claim for \$472.63 for unpaid utilities.

BC Hydro, Fortis BC, to end of lease-

I do not find the landlord is entitled to these costs, due to their confirmation that they left the heating on during this time. The landlord has not provided a reason that it was necessary to fully heat the home while it was vacant and I interpret the term in the written tenancy agreement to mean that the tenants are responsible for the utilities they used while living there.

I therefore dismiss their claim for utilities from December 1, 2018, through February 28, 2019.

Loss of rental income for December 2018-February 28, 2019-

Under section 45(2) of the Act, a tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term. In this case, the written tenancy agreement shows the fixed term ended on February 28, 2019.

In the case before me, I accept that the tenants provided insufficient notice that they were ending the fixed term tenancy agreement prior to the end of the fixed term as they vacated the rental unit on November 30, 2018.

I therefore find the tenants were responsible to pay monthly rent to the landlord until the end of the fixed term, subject to the landlord's requirement that they take reasonable measures to minimize their loss.

I find it reasonable that the landlord would be unable to find a new tenant for December 2018, the next month after the tenancy ended, when the tenants' notice to vacate was given sometime in November, 2018. I therefore find the landlord submitted sufficient evidence to support their claim for loss of rent revenue for December 2018, and grant them a monetary award of \$3,200.00.

As to the landlord's claim for loss of rent revenue for January and February 2019, the landlord's evidence shows that they began advertising the rental unit within the first 10 days of November 2018, and never reduced the monthly rent requested. The evidence

also shows that the rental unit was available for a short or long term lease, which I find contradicts their evidence at the hearing that they were offering only a short term lease.

I also find the evidence supports that the landlord never moved into the rental unit, which I interpret to mean that the rental unit was available for a long term lease, in contradiction of their statements at the hearing.

As the landlord's testimony did not match the advertisements and other documentary evidence, I find the landlord's evidence to be inconsistent and therefore unreliable.

I find that in circumstances like these, one way a landlord may minimize their loss of rent revenue is to reduce the monthly rent requested and then seek the difference in rent through the end of the fixed term.

In this case, the landlord's evidence shows that they never reduced the monthly rent through the balance of the fixed term, and I therefore find this shows they did not take reasonable measures to minimize their loss.

I therefore dismiss the landlord's claim for loss of rent of \$3,200.00 each for January and February 2019.

I inform the tenants that the tenancy ended on November 30, 2018, when they vacated the rental unit; however, nothing in the previous dispute resolution Decision shows that their obligation under their fixed term tenancy ended as well.

As the landlord has been at least partially successful with their application, I grant the landlord recovery of their filing fee of \$100.00, pursuant to section 72(1) of the Act.

I do not authorize the landlord to retain the tenants' security deposit, as the landlord has previously been ordered to return it, by another arbitrator as previously referenced in this Decision.

Due to the above, I grant the landlord a monetary award of \$3,772.63, comprised of \$472.63 for unpaid utilities owed under the written tenancy agreement, \$3,200.00 for loss of rent revenue for December 2018, and the filing fee of \$100.00.

I grant the landlord a final, legally binding monetary order pursuant that amount.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are advised that costs of such enforcement are subject to recovery from the tenants.

Conclusion

The landlord's application for monetary compensation is granted in part and they have been awarded a monetary order in the amount of \$3,772.63.

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: August 26, 2019

Residential Tenancy Branch