



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords filed under the Residential Tenancy Act (the “Act”), for a monetary order for money owed or compensation for loss and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Are the landlords entitled to monetary compensation for damages?

Background and Evidence

The parties agreed that the tenancy began on September 1, 2015. Rent in the amount of \$2,100.00 was payable on the first of each month. The tenants paid a security deposit of \$1,050.00.

The tenancy ended based on a Two Month Notice to End Tenancy for Landlord Use of Property, issued on July 30, 2017, with an effective date of September 30, 2017. The tenancy ended on September 30, 2017.

The landlords claim as follows:

a.	Property taxes (July to November 2017)	\$294.34
b.	Strata fees (July – Nov 2017)	2,223.65
c.	Home owner's insurance (Aug – Nov 2017)	\$173.33
d.	Mortgage payments (Sept – Nov 2017)	\$3,702.95
e.	Interest on short term loan - tuition	\$996.41
f.	BC Hydro	\$38.70
g.	Filing fee	50.00
	Total claimed	

The landlords testified that they should be entitled to recover the above loss as the tenants were interfering with the sale of the property. The landlords stated that the real estate agent could not properly list the property as the tenants were not allowing photographs.

The landlords testified that had the tenants not interfered with the landlord's right to list the property, they likely could have sold the premises quicker and they would not have incurred any of the above costs.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlords have the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, I find the landlords have not proven a violation of the Act, by the tenants. The landlords issued a Two Month Notice to End the Tenancy for Landlord's Use of Property, pursuant to section 49 of the Act, on July 30, 2017. The reasons for ending the tenancy was the landlords would be occupying the premise.

I find the landlords application is unreasonable because they cannot claim a loss when they were not entitled to give possession of the property to anyone for at least six months after the effective date of the notice, which the earliest the landlords were entitled to sale the property was March 2018.

As the landlords are claiming for the time period of July 2017 to November 2017, I find the landlords claim must be dismissed as they were not entitled to sale the property, at any time during this period.

As the landlords was not successful with their application, I decline to award the cost of the filing fee to the landlords.

Conclusion

The landlords' application is dismissed.

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: January 27, 2020

Residential Tenancy Branch