



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDL-S MNRL-S FFL

Introduction

The landlord applies for compensation against their former tenants pursuant to sections 38(6), 67, and 72, of the *Residential Tenancy Act* ("Act").

The landlord attended the hearing on April 19, 2021 at 1:30 PM, which was held by teleconference. The tenants did not attend the hearing, which ended at 1:48 PM. The landlord explained that they had received an email from the tenants, about thirty minutes before the hearing, that the tenants' phone service (Rogers Wireless) was down and that they were aware of the hearing, but were unable to dial-in.

Issue

Is the landlord entitled to compensation?

Background and Evidence

The tenancy began on September 15, 2020, and it was a one-year fixed-term tenancy. However, the tenants ended the tenancy early, and the tenancy ended on December 1, 2020. Monthly rent was \$1,875.00 and the tenants paid a security deposit of \$937.50.

The landlord seeks compensation in the amount of \$8,717.51 for the following: \$183.75 for the cost of a yard clean-up, \$46.26 for painting costs, \$50.00 for labour costs (done by the landlord), and the loss of rent of \$9,375 for five months (December 2020 to April 2021). The landlord also seeks to recover the cost of the \$100.00 filing.

Submitted into evidence to support the landlord's claim were several photographs, invoices and receipts, and a completed condition inspection report.

Analysis

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

Section 37(2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for compensation related to the yard clean-up, painting, and labour costs. The tenants clearly did not leave the rental unit in the same undamaged state as when they started the tenancy, thus, they are liable for costs related to the landlord's repair and cleaning, including that of the yard.

In respect of the landlord's claim for compensation from the loss of rent, a fixed-term tenancy may only be ended in accordance with section 45(2) of the Act:

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.

In this case, the tenants did not end the tenancy in compliance with the Act. But for the tenants' ending the fixed-term tenancy in breach of the tenancy agreement and of the Act, the landlord would not have suffered the loss of rental income since December 1, 2020.

The landlord provided evidence that the rental unit is listed with a property management company, and that the listing is also with several other forums, including on Facebook, Kijiji, Marketplace, Castanet, and others. In addition, the landlord testified that they have lowered the rent to \$1,750.00 in an effort to spurn interest. Based on this, I conclude that the landlord has done what is reasonable to mitigate losses.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for compensation.

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord succeeded in their application, I grant them \$100.00 in compensation to cover the cost of the filing fee, for a total of \$9,755.01.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I order that the landlord may retain the tenants’ security deposit of \$937.50 in partial satisfaction of the above-noted award.

A monetary order in the amount of \$8,817.51 is granted to the landlord and is issued in conjunction with this decision. A copy of the monetary order will need to be served by the landlord on the tenants in order for the order to be enforceable in court.

Conclusion

I grant the landlord a monetary order for \$8,817.51, which must be served on the tenants. If the tenants fail to pay the landlord the amount owed, the landlord may file and enforce the order in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: April 19, 2021

Residential Tenancy Branch