



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, MNDCL-S, MNSDS-DR, FFL, FFT

Introduction

This hearing was convened in response to cross applications.

On January 26, 2021 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for damage to the rental unit, to keep all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

Only the Tenants with the initials “JD” and “AP” are named as Respondents in the Landlord’s Application for Dispute Resolution. As these are the only two Respondents named by the Landlord, any monetary Order granted to the Landlord will only name these two Respondents.

The Agent for the Landlord stated that on January 30, 2021 the Landlord’s Dispute Resolution Package and the evidence the Landlord submitted to the Residential Tenancy Branch in January of 2021 were sent to the Respondents named in the Landlord’s Application for Dispute Resolution, via registered mail. The Tenant with the initials “EL”, the Tenants’ spokesperson, acknowledged that the aforementioned documents were received by the Respondents named in the Landlord’s Application for Dispute Resolution.

As the Respondents named in the Landlord’s Application for Dispute Resolution attended the hearing and received the aforementioned documents, the evidence was accepted as evidence in support of the Landlord’s Application for Dispute Resolution.

On April 06, 2021 all Respondents named on the first page of this decision filed an Application for Dispute Resolution, in which they applied for the return of their security deposit and to recover the fee for filing an Application for Dispute Resolution.

The Tenant with the initials “EL” stated that on April 09, 2021 the Tenants’ Dispute Resolution Package and the evidence the Tenants submitted to the Residential Tenancy Branch in April of 2021 were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On May 20, 2021 the Landlord submitted evidence in response to the Tenants’ Application for Dispute Resolution. The Agent for the Landlord stated that these documents were served to the Tenants on May 22, 2021. The Tenant with the initials “EL” stated that this evidence was mailed only to the Tenant with the initials “JP”, who showed it to the other Tenants. As all Tenants have had an opportunity to view this evidence, it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for lost revenue?

Should the security deposit be retained by the Landlord or returned to the Tenants?

Background and Evidence

The Landlord and the Tenants agree that:

- the tenancy began on September 15, 2020;
- the Tenants with the initials “JD” and “AP” signed a tenancy agreement;

- The Tenants with the initials “JO”, “EL” and “AM” are listed on the “Schedule of Parties” which was part of the written tenancy agreement;
- the Tenants with the initials “JD”, “AP”, “EL”, and “AM” signed the addendum to the tenancy agreement;
- All of the Tenants named in the Tenants’ Application for Dispute Resolution were Tenants in the rental unit;
- the tenancy agreement was for a fixed term, the fixed term of which ended on September 14, 2021;
- the tenancy agreement declares that the monthly rent of \$3,000.00 is due by the fifteenth day of each month;
- no rent was paid for the period between January 15, 2021 and January 31, 2021;
- a security deposit of \$1,500.00 was paid;
- a pet damage deposit of \$1,500.00 was paid;
- the pet damage deposit was repaid on January 25, 2021;
- on December 14, 2020 the Tenants gave the Landlord notice of their intent to vacate the rental unit, via email;
- the written notice the Tenants gave on December 14, 2020, which was submitted in evidence, declared that the Tenants would vacate the unit by January 01, 2021;
- rent was paid for the period between December 15, 2021 and January 14, 2021;
- the rental unit was vacated on January 14, 2021; and
- a forwarding address for the Tenants was provided, in writing, on January 15, 2021.

The Landlord is seeking compensation for lost revenue. In support of this claim the Agent for the Landlord stated that:

- the Landlord began advertising the rental unit on popular websites on December 17, 2020;
- the Landlord was able to re-rent the unit for February 01, 2021;
- the Landlord is seeking compensation of \$1,500.00 for rent that he would have collected between January 15, 2021 and February 01, 2021 if the tenancy had continued in accordance with the fixed term of the tenancy;
- the new occupants of the rental unit are only paying rent of \$2,650.00, which is a difference of \$350.00;
- the Landlord is seeking compensation for the difference in rent he would have collected (\$350.00) if the tenancy had continued for the periods between February 15 to March 14, 2021; March 15 to April 14, 2021; May 15 to April 14, 2021; April 15 to June 14, 2021; June 15 to July 14, 2021; July 15 to August 14, 2021; and August 15 to September 14, 2021; and

- the Landlord is seeking compensation for the difference in rent he would have collected (\$175.00) if the tenancy had continued for the period between February 01, 2021 and February 14, 2021.

In response to the claim for lost revenue, the Tenant with the initials "JQ" stated that in October of 2020 he had an "escalated" conversation with the Landlord, at which time the Landlord told him he would let the Tenants end the tenancy early and that the Landlord was going to give notice to end the tenancy.

In response to the claim for lost revenue, the Tenant with the initials "EL" stated that the Landlord agreed to end the tenancy prior to the end of the fixed term.

The Landlord stated that he did not tell the Tenants he would mutually agree to end the tenancy early and he did not tell the Tenants he would be giving them notice to end the tenancy.

The Landlord and the Tenants agree that they did not mutually agree to end the tenancy in writing. The parties agree that the Landlord did not give the Tenant notice to end this tenancy.

In response to the claim for lost revenue, the Tenant with the initials "EL" stated that:

- the Tenants did not provide the Landlord with written notice that the tenancy was ending because the Landlord breached a material term of the tenancy agreement;
- the Landlord provided the Tenants with 2 lawn mowers, a nozzle spray gun, an air conditioning unit, a wi-fi modem, wi-fi service, and a security camera system;
- the aforementioned items are not listed on the new tenant's tenancy agreement, so she presumes they were not provided to the new tenants;
- the reduced rent the new tenants paid reflects the reduction in services/facilities provided to the new tenants.

In response to the Tenants' submission regarding a reduction in services provided to the new tenants, the Agent for the Landlord stated that:

- the new tenants did not require all of the aforementioned services provided to the Tenants;
- the new tenants were provided with wi-fi, although they did not require it; and
- the new Tenants were provided with a washer/dryer, patio furniture, and a security camera system.

Analysis

On the basis of the undisputed evidence, I find that the Tenants entered into a fixed term tenancy agreement with the Landlord. I find that the Tenants named in the Landlord's Application for Dispute Resolution signed the tenancy agreement. I find that all of the Tenants named in the Tenants' Application for Dispute Resolution signed the tenancy agreement and/or the addendum to the tenancy agreement. On the basis of the testimony at the hearing, I find that all parties believed that all of the Tenants were parties to the tenancy agreement.

On the basis of the undisputed evidence, I find that rent of \$3,000.00 was due by the fifteenth day of each month; that the fixed term of the tenancy began on September 15, 2020; and the fixed term of the tenancy ended on September 14, 2021.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 45(2) of the *Residential Tenancy Act (Act)* permits a tenant to end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and 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.

On the basis of the undisputed evidence, I find that on December 14, 2021 the Tenants gave written notice of their intent to end the tenancy on January 01, 2021. I find that the Tenants did not comply with section 45(2) of the *Act* when they ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement.

Section 45(3) of the *Act* stipulates that if a landlord has failed to comply with a material term of the tenancy 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. As there is no evidence that the Tenants gave the Landlord written notice of a breach of a material

term of the tenancy, I cannot conclude that they had the right to end this tenancy pursuant to section 45(3) of the *Act*.

On the basis of the undisputed evidence, I find that the Landlord experienced a loss of revenue as a result of the premature end to this fixed term tenancy. Documents submitted by the Landlord establish that on December 17, 2020 he advertised the rental unit for \$3,000.00 and on January 07, 2021 he reduced the rent to \$2,650.00. I find that the Landlord made reasonable efforts to re-rent the unit but was not able to re-rent the unit until February 01, 2021. I therefore find that the Landlord is entitled to compensation for those losses, pursuant to section 67 of the *Act*.

I find that the Landlord lost \$1,500.00 in revenue for the period between January 15, 2021 and February 01, 2021 which he would have collected if the tenancy had continued in accordance with the fixed term of the tenancy. I therefore find that the Landlord is entitled to compensation for this period, in the amount of \$1,500.00, which must be paid by the Tenants named in the Landlord's Application for Dispute Resolution.

I find that the Landlord lost \$175.00 in revenue for the period between February 01, 2021 and February 14, 2021, which he would have collected if the tenancy had continued in accordance with the fixed term of the tenancy. This is the difference between the amount the Tenants would have paid (\$1,500.00) and the amount the new occupants paid (\$1,325.00). I therefore find that the Landlord is entitled to compensation for this period, in the amount of \$175.00, which must be paid by the Tenants named in the Landlord's Application for Dispute Resolution.

I find that the Landlord lost \$2,450.00 in revenue for the period between February 15 to September 14, 2021, which he would have collected if the tenancy had continued in accordance with the fixed term of the tenancy. This is the difference between the monthly rent the Tenants would have paid (\$3,000.00) and the rent the new occupants paid (\$2,650.00) for seven months. I therefore find that the Landlord is entitled to compensation for this period, in the amount of \$2,450.00, which must be paid by the Tenants named in the Landlord's Application for Dispute Resolution.

In adjudicating this matter, I have placed no weight on the Tenants' submission that the Landlord told the Tenants he would serve them with notice to end the tenancy. I find that even if this were true the submission is irrelevant, as the Landlord did not serve notice to end the tenancy.

I find that the Tenants submitted insufficient evidence to corroborate their submission that the Landlord told the Tenants he would agree to end the tenancy prior to the end of the fixed term or to refute the Landlord's testimony that he did not make such an agreement. Even if the Landlord did tell the Tenants he would be willing to end the tenancy prematurely, any mutual agreement to end the tenancy must be in writing, pursuant to section 44(1)(c) of the *Act*. As the parties agree they did not mutually agree to end the tenancy, in writing, I find that this tenancy did not end in accordance with section 44(1)(c) of the *Act*.

I have considered the Tenants' submission that the new tenants paid reduced rent because they were provided with reduced services/facilities. While I accept that the new tenants were not provided with some of the services/facilities provided to the Tenants, such as lawn mowers and an air conditioning unit, the new tenants were provided with other services/facilities, such as a washer/dryer and patio furniture, which were not provided to the Tenants. I find that the services/facilities provided to the new tenants, although different, were of similar value to those provided to the Tenants. I therefore find that the difference in services/facilities provided to the new tenants does not devalue and has no direct bearing on the monthly rent.

Pursuant to section 72(2) of the *Act*, I find that the Landlord has the right to retain the Tenants' security deposit in partial satisfaction of this claim. I therefore dismiss the Tenants' application to recover the fee for filing their Application for Dispute Resolution.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

I find that the Tenants have failed to establish the merits of their Application for Dispute Resolution and I dismiss their application to recover the fee for filing an Application for Dispute Resolution.

Conclusion

The Tenants' Application for Dispute Resolution is dismissed, without leave to reapply.

The Landlord has established a monetary claim, in the amount of \$4,225.00, which includes \$4,125.00 in lost revenue and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$1,500.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$2,725.00. In the event the Tenants named on the Landlord's Application for Dispute Resolution do not voluntarily comply with this Order, it may be served on those Tenants, filed with the Province of British Columbia Small Claims Court and enforced 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 *Act*.

Dated: June 01, 2021

Residential Tenancy Branch