Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   MNDL-S, MNDCL, FFL, MNSDS-DR

Introduction

The landlords applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. They ask us for the following orders against the tenants.

1. Compensation in the amount of $1,350.00 for damage that the tenants caused during the tenancy [the 'Damage Claim'].
2. Compensation for two months rent (in the amount of $5,400.00) as lost revenue when the tenants ended the tenancy agreement four months early [the 'Revenue Claim'].
3. Reimbursement for the $100.00 filing fee for their application.

The tenants also applied to the RTB for Dispute Resolution. They ask us to order that the landlords return $1,350.00 that the tenants deposited with them as security [the 'Deposit'].

The landlords participated in this hearing by way of an agent. The tenants also participated.

This hearing was conducted *via* teleconference: we heard only the voices of those who participated in this hearing. Accordingly, the parties' oral statements to us in this hearing were made neither under oath nor affirmation: we exercised our discretion under section 74 of the Act to not administer any oaths as part of this relatively informal and expeditious teleconference.

Note that we refer to the participants in this dispute in the plural form, even though a party may be an individual. We do this in adoption of the BC Public Service Agency's guidelines, 'Words Matter: Guidelines on Using Inclusive Language in the Workplace' [updated 18 May 2018].

Issues to be Decided

What is a reasonable amount of compensation for the Damage Claim?

Did the landlords minimize their losses when they learned that the tenants would end the tenancy agreement early?

Should the tenants reimburse the landlords for the cost of filing their application?

Should the landlords return the Deposit to the tenants?

Background and Evidence

The parties agreed in this hearing that rent was $2,700.00 *per* month, and that this tenancy was for a fixed term, which they had agreed would end on 30 September (corroborated by a copy of the written tenancy agreement). Despite this agreement, the tenants wrote to the landlords on 6 April, saying (in part), '[we] will be moving out of [our] apartment on May 31st.'

The tenants concede in their filing that, '[we] did break the lease early, but [we] gave our landlord over a months [*sic*] written notice.'

The landlords retained an agent to find new tenants for June, but when this agent failed, the landlords took over and found new tenants for August.

The tenants note that the landlords did not arrange to have anyone view the unit while they were still living there, and that the landlords had almost two months' notice of the end of the tenancy.

Regarding the Damage Claim, the landlords told us the following:
1. the tenants left the unit with patches on walls, and some scuff marks (corroborated by photo's);
2. it is hard to 'spot paint' such patches and marks, and so they had the entire unit repainted; and
3. this repainting cost them $1,600.00 (corroborated by an estimate from painters).

In reply, the tenants conceded that the patches did need to be repainted, but denied that $1,600.00 is a reasonable amount to paint these patch marks. When asked, they would not articulate what they thought a reasonable amount to paint these marks *would* be, but they suggested that landlords often keep a bucket of paint about to touch up such marks.

Analysis

We have considered all the statements made by the parties and the documents to which they referred us during this hearing. And we have considered all the arguments made by the parties.

In writing this decision, we are mindful of the nature and volume of other applications to the RTB for access to limited hearing time. Parties are given an opportunity to participate in a focused and time-limited hearing, and the Director must carefully allocate resources in hearing disputes and writing decisions. As a result of the above, we will provide below only minimal reasons for our decision, sufficient to understand our reasoning.

What is a reasonable amount of compensation for the Damage Claim?

The landlords bear the burden to make out their Damage Claim on a balance of probabilities. Have they met this burden? That is, have they proven that the entire unit probably needed to be repainted to deal with the patches and scuffs left on the walls?

We accept that they paid $1,600.00 to repaint the unit. The tenants fairly concede that the patches needed painting, but they challenge reasonableness of $1,600.00 to repaint the entire unit: they argue that the patches that needed paint did not necessitate the entire unit to be repainted.

Short of compelling evidence that the entire unit did need repainting (*e.g.* a statement from the painter detailing how there was no reasonable option but to repaint the entire unit), we are left with it being just as probable that only the patches needed painting.

The tenants have conceded that some painting was required, but would not tell us what a reasonable cost might be. And so we will halve the amount sought by the landlords (from $1,600.00 to $800.00) and deem this a reasonable amount in absence of submissions from the tenants on this point.

Did the landlords minimize their losses when they learned that the tenants would end the tenancy agreement early?

The landlords argue that the tenants are liable to them for two months rent (June and July), which is the period between the tenants vacating the unit and the landlords having new tenants move in.

But the tenants argue that they informed the landlords of their decision to end this tenancy early back on 6 April, and so the landlords had from that time to start minimizing their loss by seeking new tenants. The landlords' position is that they were not obliged to try and minimize their loss until 1 June, when the unit was vacant.

We are not persuaded by the landlords' argument. We agree that they knew from 6 April that they would need new tenants for 1 June if they did not want to lose revenue from their rental unit. But there is no evidence that they did anything to find new tenants until after these tenants vacated. The landlords missed an opportunity to mitigate their lost revenue.

Despite this, the tenants admittedly broke the tenancy agreement four months early. We find a reasonable compensation for this breach of contract in these circumstances to be one month of rent, *i.e.* $2,700.00.

Should the tenants reimburse the landlords for the cost of filing their application?

As the landlords succeeded in their application, we will order that the tenants reimburse them for the cost of filing the application.

Should the landlords return the Deposit to the tenants?

As we have determined that the tenants are liable to the landlords for $3,600.00 (*i.e.* $2,700.00 rent + $800.00 painting + $100.00 filing fee), we will permit the landlords to retain the Deposit in partial satisfaction of this amount (and credit the tenants with a further $28.85 of interest on that Deposit from 30 September 2022 to today's date).

Conclusion

We grant the landlords' application, awarding $800.00 under the Damage Claim; $2,700.00 under the Revenue Claim; and $100.00 for the filing fee. We order that the tenants pay to the landlords $2,221.15 *per* section 67 of the *Residential Tenancy Act* [the 'Act'].

We authorise the landlords to retain the Deposit (plus interest) in partial satisfaction of this sum *per* section 72 (2) (b) of the Act, and dismiss the tenants' application without leave to re-apply.

The landlords must serve this order on the tenants as soon as possible. If the tenants do not comply with our order, then the landlords may file this order in the Small Claims Division of the Provincial Court of British Columbia. Then the landlords can enforce our order as an order of that court.

This decision is made on authority delegated to us by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: 24 January 2024

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Residential Tenancy Branch