

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order for unpaid rent, damages to the unit, to keep all or part of the security and pet deposits and recovery of the filing fee. Both parties participated in the conference call hearing.

Issues to be Decided

Is the landlord entitled to any of the above under the Act.

Summary of Background and Evidence

This fixed term tenancy started July 1, 2010 with rent of \$2300.00, the tenants paid a security deposit of \$1150.00 and a pet damage deposit of \$250.00.

The landlord's agents testified that in September 2010 the tenants vacated the rental unit and broke the fixed term lease without giving proper, signed notice per the Act. The landlord's agents stated that the tenants have an unpaid utility bill in the amount of \$312.49. The landlord's agents stated that they have been unable to re-rent the unit and are claiming for the loss of rent and cost of utilities during the time the unit has been vacant; October, November, December 2010.

The landlord's agents stated that section Z of the move out inspection was filled out before the tenant signed it and that the \$400.00 deduction agreed to by the tenant was for recovery of the \$100.00 rent incentive.

The landlord's agents stated that ads to re-rent the property were placed on 2 web sites offering free ads and notices were put up in a local grocery store and laundromat.

The landlord's agents are claiming the following in this application:

October, November 2010 rent	\$4600.00
Rent incentive	\$400.00
Utilities	\$600.00
Garbage Disposal	\$400.00
Total	\$6000.00

The tenant testified that the landlord's agent gave the tenants notice to conduct a 3 month inspection on September 24 or 25, 2010 prior to the 3 month inspection deadline as agreed to in the tenancy agreement addendum. The tenants advised the landlord's agents that those 2 days would not work due to their schedules and request an alternate date but this request was denied. The tenants stated that the landlord's agents then posted notice on the door that they would be making entry on September 24 and 25, 2010 to complete the inspection and did so.

The tenants had advised the landlord's agents that if the early inspection was conducted, that the tenants would be terminating their tenancy immediately and vacating the rental unit. The tenants stated that the landlord's agents went to the tenant's place of work on September 24, 2010, all parties agreed to end the tenancy and the agents requested notice in writing from the tenants. The tenants then sent an email to the landlord's agents confirming that they would be vacating the rental unit September 30, 2010. The tenants stated that they did not provide the landlord's agents with a signed, written notice to end tenancy.

On October 2, 2010 a move out inspection was completed with both parties present and the tenants agreed in writing to the landlord keeping \$400.00 of the security deposit for damages. The tenants stated that the landlord's agents refused to give the tenants a copy of the move out inspection on this day and when they did receive their copy all of the notations in section Z had been added without their consent or agreement.

The tenants stated that they closely monitored local news papers and the property to see if it was actively being advertised or when it was re-rented. The tenants testified that ads were never placed in the local newspaper to rent the property or a 'for rent' sign placed in front of the property and that the ads on the websites were never re-posted to keep them current in the listings.

The tenants stated that the landlord's agents contacted the landlord On December 1, 2010 and that during this conversation it was determined that the landlord, upon return from England January 7, 2011, would be occupying the property.

The tenants do not dispute that they owe \$312.49 for an unpaid utility bill.

Law

Residential Tenancy Policy Guideline # 5 speaks to the "Duty to Minimize Loss," and provides in part as follows:

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

Residential Tenancy Act Section 28 Protection of tenant's right to quiet enjoyment

A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Act **Section 45 Tenant's notice**

- (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service 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.
- (4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

Residential Tenancy Act **Section 52 Form and content of notice to end tenancy**

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,

Analysis

Based on the documentary evidence and undisputed testimony of the parties, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for a monetary order for loss, unpaid rent and damages as a proper notice to end tenancy was not provided by the tenants.

While the landlord's agents had the option of placing rental ads in the local newspapers to mitigate the loss suffered by the landlord, there is no evidence that they did so. It must also be considered that as of the December 1, 2010 the property was no longer being actively advertised for rent as the landlord was going to take possession of the property.

Accordingly, I find that the landlord has established entitlement to compensation in the limited amount of ~~\$3180.05~~, calculated on the basis of 50% of the rent and utilities for the months of October and November 2010, all costs for the garbage disposal and all costs for the July-September utility bill.

October, November 2010 rent	\$2300.00	(\$4600.00)
Rent incentive	\$350.00	(\$400.00)
July-Sept Utilities Unpaid	\$312.49	
BC Hydro Oct-Nov 2010	\$51.51	(\$103.09)
Terasen Gas Oct-Nov 2010	\$87.65	(\$175.30)
Garbage Disposal	\$78.40	
Total	\$3180.05	

As the landlord has achieved some success with their application, I find that they are also entitled to recover the \$50.00 filing fee.

Conclusion

I find that the landlord has established a monetary claim for \$3180.05 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$1400.00 security and pet deposits in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$1830.05** ($\$3180.05 + \$50.00 = \$3230.05 - \$1400.00 = \1830.05)

A monetary order in the amount of **\$1830.05** has been issued to the landlord and a copy of it must be served on the tenant. If the amount is not paid by the tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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 *Residential Tenancy Act*.

Dated: January 10, 2011

Dispute Resolution Officer