



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNR; MNDC, FF

Introduction

This is the Landlord's application for a Monetary Order for unpaid rent and loss of revenue; compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

Issues to be Decided

- Is the Landlord entitled to a monetary award under the provisions of Sections 67 and 72 of the Residential Tenancy Act (the "Act")?

Background and Evidence

A copy of the tenancy agreement was provided in evidence, which was signed by the parties on May 10, 2010. The tenancy was a term lease, expiring May 31, 2012. Monthly rent was \$1,400.00, due the first day of each month. Monthly rent did not include utilities. The Tenants paid a security deposit in the amount of \$700.00 on May 10, 2010, and a pet damage deposit in the amount of \$234.00 on May 30, 2010. The pet damage deposit was full refunded to the Tenants on July 23, 2010.

The Landlord's agent RL testified that the Tenants moved out of the rental unit on October 7, 2010, without giving any notice. The Tenant testified that he gave the Landlord notice on September 9, 2010, that they would be moving out by October 8, 2010. The Landlord's agent testified that he didn't receive that notice until October 12,

2010, by which time the Tenants had already vacated the rental unit. The Tenants did not pay rent for the month of October, 2010.

The Tenant testified that they signed the tenancy agreement because they were coerced into it. He testified that they moved out of the rental unit because they didn't feel they had any privacy and there were rats on the premises.

The Landlord's agent testified that the Tenants had negotiated a 2 year lease and that the Landlord had agreed not to raise the rent for that period of time. The Landlord's agent testified that the Tenants also negotiated a \$200.00 reduction in rent because rent was originally \$1,600.00 per month.

The Landlord's agent testified that the rental unit was advertised immediately for rent, on two on-line websites (updated weekly); in the local paper, every week; and on a cascading sign on the rental property. The Landlord decided to advertise the rental unit at the lower price of \$1,400.00, rather than attempt to rent it for \$1,600.00. The Landlord's agent testified that the building is restricted to occupants who are 55 years or older. He said the market was slow over the winter months, but has been picking up. The Landlord's agent testified that prospective tenants were advised that the rent is negotiable.

The Landlord's agent testified that the Tenants did not leave the rental unit in a reasonably clean condition at the end of the tenancy and that the cost to clean it to an acceptable standard was \$246.40. The Landlord's agent testified that the Tenants did not pay the final utility bill in the amount of \$284.95. The Landlord's agent testified that the Tenant's cat damaged a screen and that the cost to repair it was \$22.51.

The Tenant testified that the rental unit was not in a reasonably clean condition when the Tenants moved in, and needed paint. He stated that the Tenants cleaned the rental unit before they moved out and provided a receipt in evidence.

The Landlord seeks a monetary award, calculated as follows:

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|--|-----------------|
| Unpaid rent for October, 2010 | \$1,400.00 |
| Loss of revenue from November 1, 2010 to March 31, 2011 | \$7,000.00 |
| Liquidated damages | \$672.00 |
| Cost of cleaning the rental unit at the end of the tenancy | \$246.40 |
| Cost of repairing screen | \$22.51 |
| Unpaid utilities | \$284.95 |
| Recovery of the filing fee | <u>\$100.00</u> |
| TOTAL | \$9,725.86 |

Analysis

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.

The Landlord must prove four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage being claimed.

The tenancy agreement is a fixed term tenancy agreement. Section 45 of the Act provides for ways in which a tenant can end a tenancy:

Tenant's notice

- 45** (1) A tenant may end a periodic 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, and

(b) 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.

(2) 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.

(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]*.

(emphasis added)

Section 52 of the Act requires a notice to end tenancy to be in writing.

The Tenants did not end the tenancy in accordance with the provisions of the Act, and therefore, I find that the Landlord has established that it suffered a loss as a result of the Tenant's actions. I find that the Landlord took reasonable steps to re-rent the rental unit in a timely fashion, by advertising on the internet; in the local paper; and by street sign at the rental unit.

The Landlord seeks liquidated damages in the amount of \$672.00 (\$600.00 plus HST). The tenancy agreement includes a clause for liquidated damages, which are intended to cover administrative costs in re-renting a rental unit if a Tenant ends the tenancy before the term expires. These costs include the costs of advertising, interviewing potential

new Tenants and showing the rental unit. The tenancy agreement provides for liquidated damages in the amount of \$600.00 and I allow this portion of the Landlord's claim in that amount.

A tenant is required to leave the rental unit in a reasonably clean condition at the end of the tenancy. The Tenants testified that they paid a cleaner to clean the rental unit and provided a copy of a receipt for that service. I am satisfied that the Tenants left the rental unit in a reasonably clean condition. The Landlord may have wished to clean the rental unit to a higher standard, but the Tenants are not responsible for payment of the costs incurred to do so. This portion of the Landlord's claim is dismissed.

Based on the documentary evidence and testimony provided, I find that the Landlord has established its claim for the cost of repairing the screen. This portion of the Landlord's claim is granted.

I find that the Landlord did not provide sufficient evidence that the Tenants owe \$284.95 in utilities. The Landlord did not provide complete copies of utility bills in evidence. The bills appear to have been cut and pasted from the originals. The utility costs for the period of October 13 to November 26/10 (approximately 6 weeks) appear to be \$59.31. Utility costs for the period of November 27, 2010 to January 27, 2010 (approximately 9 weeks) appear to be \$225.64. A landlord can recover minimal costs incurred in keeping a vacant unit safely warm in the winter months, however there appears to be almost 400% difference in the amount of power used over the last 9 weeks of the winter period compared to the first 6 weeks of winter period. The Landlord provided no reasonable explanation for this large increase in utilities. For these reasons, I find that the Landlord has not established the actual amount owed by the Tenants for utilities and dismiss the Landlord's claim for unpaid utilities as unproven.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of the Landlord's monetary claim. No interest has accrued on the security deposit.

The Landlord has been successful in its application and is entitled to recover the cost of the \$100.00 filing fee from the Tenant.

The Landlord has established a monetary award, calculated as follows:

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|---|-------------------|
| Unpaid rent and loss of revenue to March 31, 2011 | \$8,400.00 |
| Liquidated damages | \$600.00 |
| Cost of repairing screen | \$22.51 |
| Recovery of the filing fee | <u>\$100.00</u> |
| Subtotal | \$9,122.51 |
| Less security deposit | - \$700.00 |
| TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF | \$8,422.51 |

Conclusion

I hereby grant the Landlord a Monetary Order in the amount of \$8,422.51 against the Tenants. This Order must be served on the Tenants and may be filed in the Provincial Court of British Columbia (Small Claims) 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: March 16, 2011.
