



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD and FF

Introduction

This application was brought by the landlord on July 6, 2012 seeking a monetary award for unpaid rent arising from the tenants leaving the fixed term agreement early, lease break fee (liquidated damages), general cleaning, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

At the commencement of the hearing, the landlord's agent advised that another tenant in the building had assisted them in beginning a new tenancy in July 2012. Therefore, she withdrew a claim for July 2012 rent and liquidated damages as the landlord had incurred minimal costs in establishing the new tenancy.

Issue(s) to be Decided

This matter now requires a decision on whether the landlord is entitled to a monetary award for unpaid rent, general cleaning, recovery of the filing fee and authorization to retain the security deposit in set off.

Background and Evidence

This tenancy began on August 1, 2011 under a fixed term rental agreement set to end on July 31, 2012. Rent was \$1,150 per month and the landlord holds a security deposit of \$575 paid at the beginning for the tenancy.

During the hearing, the parties gave evidence that the tenants had given notice on May 15, 2012 that they would be vacating the rental unit on May 31, 2012 to take advantage of a more suitable housing opportunity.

By letter of reply on May 17, 2012, the landlord reminded the tenants of the notice provisions for fixed term rental agreement and that if new tenants were not found, they would be liable for the rent for June and July 2012 and the \$250 lease break fee.

As noted the landlord was able to find a new tenant for July 2012 and waived the lease break fee.

Therefore, the landlord now seeks a monetary award for \$1,150 for June 2012 rent, \$140 for general cleaning, the \$50 filing fee for this proceeding and authorization to retain the \$575 security deposit in set off.

The tenant stated that because there were some deficiencies in the rental building that had not been remedied as requested, he felt the tenants were justified in ending the tenancy early.

Analysis

As stated in the landlord's letter of reply to the tenants, Section 45(2)(b) of the *Act* provides that a tenant in a fixed term rental agreement may only give notice to end the tenancy on a date that is not before the end of tenancy date set by the agreement which was July 31, 2012.

Section 45(3) of the *Act* does provide an exception where: "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."

In the present matter, the tenant has provided no evidence of having given the landlord written notice, and I accept the evidence of the landlord that the matter in question – an exit door with no exterior keyed entry – is so configured to comply with fire regulations.

I would further note that, even if this had been a month to month tenancy, the tenants' notice was still less than the required full month following the next rent due payment.

Therefore, I find that the tenants are responsible for the rent for June 2012.

As to the landlord's claim for cleaning costs, the tenant concurred with the \$140 charge.

As the application has succeeded on its merits, I find that the landlord is entitled to recovery the filing fee for this proceeding from the tenants.

In addition, as authorized by section 72 of the *Act*, I hereby order that the landlord shall retain the tenants' security deposit in set off against the balance owed.

Thus, I find that the tenants owe to the landlord an amount calculated as follows:

Rent for June 2012	\$1,150.00
Filing fee	<u>50.00</u>
Sub total	\$1,340.00
Less retained security deposit (No interest due)	<u>- 575.00</u>
TOTAL	\$ 765.00

Conclusion

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is also accompanied by a Monetary Order for **\$765.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

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: August 03, 2012.

Residential Tenancy Branch