



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NAI Goddard & Smith Realty Services Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR, MNDC, MNSD, FF

Introduction

This hearing concerns the landlord's application for a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. Both parties attended and / or were represented and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the 1 year fixed term of tenancy began on August 30, 2013. Monthly rent of \$925.00 was due and payable in advance on the first day of each month, and a security deposit of \$462.50 was collected. A move-in condition inspection report was completed with the participation of both parties.

It appears that it was not until late in October 2013 when the tenant informed the landlord of her intention to vacate the unit by October 31, 2013. There is no evidence that notice to end tenancy was provided in writing. The tenant failed to provide a forwarding address, and a move-out condition inspection report was not completed.

The landlord's agent testified that after determining the tenant's whereabouts, the landlord filed an application for dispute resolution on December 09, 2013. The tenant was subsequently served with the landlord's hearing package. During the hearing the tenant confirmed that the address shown in the landlord's application continues to be her current address.

The landlord's agent testified that new renters were found for the unit effective from November 15, 2013.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and testimony, the various aspects of the landlord's application and my findings around each are set out below.

\$925.00: *loss of rental income for November 2013*

Section 45 of the Act speaks to **Tenant's notice**, in part as follows:

45(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 becomes payable under the tenancy agreement.

Further, section 52 of the Act addresses **Form and content of notice to end tenancy**.

I find that the tenant did not comply with the above statutory provisions in ending the fixed term tenancy prematurely. However, as the landlord succeeded in finding new renters effective from mid November 2013, I find that the landlord has established entitlement to loss of rental income limited to the first half of November 2013 in the amount of **\$462.50** ($\$925.00 \div 2$).

\$525.00: *liquidated damages (including \$25.00 tax)*

Residential Tenancy Policy Guideline # 4 speaks to "Liquidated Damages," in part:

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement.

I note that clause # 3 in the tenancy agreement provides for the assessment of liquidated damages of \$500.00 “plus all taxes” in the event of a breach of the tenancy agreement.

Following from all of the above, I find that the landlord has established entitlement to the full amount claimed, as a reflection of the tenant’s breach of the fixed term tenancy by ending tenancy early.

\$200.00: Strata Council fine

The Strata Council assessed a fine against the landlord for \$200.00 arising from “incidents concerning contravention of Strata Corporation Bylaws relating to Move-in/Move-out Bylaw 32.” In the Strata Council’s letter to the landlord by date of November 13, 2013, Strata Council stated in part as follows:

Following discussion by Council, it was confirmed there has been no response or reply from either yourself as the Owner of the strata lot or the resident concerned. The Strata Council decided that a fine of \$200.00 for contravention be levied against your strata lot in accordance with your Strata Corporation Bylaws and the Strata Property Act.

It is not entirely clear what specific information had been provided to the tenant concerning giving proper notice of either move-in or move-out activities, such that the protective “pads” could be installed in the elevator. Accordingly, I find that the landlord has established entitlement limited to **\$100.00**, or half the amount claimed.

\$241.50: cleaning in the unit at the end of tenancy

Section 37 of the Act speaks to **Leaving the rental unit at the end of a tenancy**, in part, as follows:

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and...

Further, the attention of the parties is drawn the following particular sections of the Act:

Section 23: **Condition inspection: start of tenancy or new pet**

Section 35: **Condition inspection: end of tenancy**

While a move-in condition inspection report was completed, a move-out condition inspection report was not. In the absence of comparative results of move-in and move-out condition inspection reports, this aspect of the landlord's application is hereby dismissed.

\$50.00: *filing fee*

As the landlord has mainly succeeded with this application, I find that the landlord has established entitlement to recovery of the full filing fee.

Total entitlement: \$1,137.50

I order that the landlord retain the security deposit of **\$462.50**, and I grant the landlord a **monetary order** for the balance owed of **\$675.00** (\$1,137.50 - \$462.50).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$675.00**. This order may be served on the tenant, filed in the 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 *Residential Tenancy Act*.

Dated: March 31, 2014

Residential Tenancy Branch

