



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MND, MNSD & MNDC

Introduction

A hearing was conducted by conference call in the presence of the applicant and in the absence of the respondents although sufficiently served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The Residential Tenancy Act permits a party to serve another by mailing, by registered mail to where the other party resides. The Supreme Court of British Columbia has held that a party cannot avoid service by refusing to pick up their registered mail. The landlord testified he attempted to serve the Application for Dispute Resolution/Notice of Hearing by mailing, by registered mail to where the tenant resides on March 11, 2015. A search of the Canada Post tracking service indicates the documents were initially sent to the rental unit. However, the tenants had filed a Change of Address form with Canada Post and the documents were re-directed to the new address. The landlord has confirmed the tenants resided at the address the documents were forwarded to. I determined the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the tenants by mailing by registered mail on March 11, 2015 despite the fact that the tenants failed to claim the Application for Dispute Resolution. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?

- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a two year fixed term written tenancy agreement that provided that the tenancy would start on June 1, 2013 and end on May 31, 2015. The tenancy agreement provided that the tenant(s) would pay rent of \$1500 per month payable on the first day of each month. The tenants paid a security deposit of \$750 prior to the start of the tenancy.

The tenants vacated the rental unit at the end of February without giving the landlord notice. The landlord attempted to rent and sell the rental unit at the same time. The rental unit was sold with possession set for April 1, 2015. The landlord claims damages for loss of rent for March 2015.

The tenancy agreement provides the rental unit was to be “smoke free.” Despite this provision the tenants smoked in the rental unit and there was significant damage as a result.

Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. I determined the landlord is entitled to the sum of \$1500 for loss of rent for March 2015. The parties entered into a fixed term tenancy agreement which was to end on May 1, 2015. The tenants breached that fixed term tenancy agreement by vacating at the end of February. The tenants failed to give notice and it was not possible to find a new tenant for March. I determined the landlord sufficiently attempted to mitigate his loss when the rental unit was sold with possession on April 1, 2015.
- b. I determined the landlord is entitled to \$598.50 for the cost of hydroxyl gen/odor control caused by the excessive cigarette smoke.
- c. I determined the landlord is entitled to \$63 for the cost of carpet cleaning. I determined this is a reasonable claim in an effort to eliminate the smoke.
- d. I determined the landlord is entitled to \$19.20 for the cost of carpet disposal.
- e. I determined the landlord is entitled to \$675.48 for the cost of replacing the flooring and underlay. The landlord was forced to dispose of the carpet because of the heavy smoke smell.
- f. I determined the landlord is entitled to \$18.52 for the cost of paint supplies.
- g. I determined the landlord is entitled to \$139.85 for the cost of the transition from the bedroom carpets to the new flooring that was installed.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$3014.55 plus the \$50 filing fee for a total of \$3064.55.

Security Deposit

I determined the security deposit plus interest totals the sum of \$750. I determined the landlord is entitled to retain this sum. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$2314.55.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: July 22, 2015

Residential Tenancy Branch

