



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASSOCIA BRITISH COLUMBIA INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an Application by the Landlords for an order for monetary compensation arising from the Tenants breaking a fixed term lease early, cleaning and strata fines, and to recover the filing fee for the Application. The Application was made under the *Residential Tenancy Act* (the “Act”)

Only the Agent for the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Agent testified that she served each of the Tenants with the Notice of Hearing and the Application by registered mail, sent on March 21, 2016, by registered mail. Copies of the registered mail receipts and the postal tracking information were provided in evidence. The tracking information in evidence indicates both Tenants signed for the mail. I find the Tenants were duly served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Did the Tenants breach the term lease, entitling the Landlords to monetary compensation?

Is the Landlord entitled to the other monetary compensation claimed for?

Background and Evidence

On or about March 19, 2015, the Tenants signed a one year fixed term tenancy agreement, which was to start on April 15, 2015 and expire on April 30, 2016. The monthly rent was \$2,200.00, payable on the first day of the month, and a security deposit of \$1,100.00 was paid.

On or about January 26, 2016, the Tenants sent the Landlord an email that they were vacating the rental unit prior to the end of the tenancy agreement. The Tenants vacated the rental unit on February 29, 2016.

The Tenants did not attend at the rental unit for the final condition inspection report. The Landlord provided in evidence copies of a notice for a final opportunity to schedule a condition inspection report, which were served on the Tenants by posting at the rental unit door prior to them vacating.

A copy of the condition inspection report was provided in evidence by the Landlord. It indicates that the rental unit was brand new when the Tenants moved in.

The Landlord has requested the following compensation.

The Landlord claimed **\$85.00** for cleaning the rental unit, which included cleaning in the garage, kitchen, in-suite laundry, and a spill on a wall. Photographs and an invoice were provided in evidence in support of this claim.

The Landlord claims **\$325.50** for touch up painting and wall repairs, and for repairing a window screen. While the rental unit was brand new when the Tenants took possession, the Landlord is claiming that the wall mounted TV brackets caused some damage to the wall, there were stains on a wall, and the wall in the children's bedroom required to be repainted. The Agent also described a scuff mark and gouges on a wall and areas that shelving or picture frames caused minor damage to the walls. The Agent also testified that a screen in the patio door requiring repairing as part of it had been pushed out of the frame. Photographs and an invoice were provided in evidence to support these claims.

The Landlord also claims **\$86.63** for a balcony inspection. The Agent testified that the Tenants removed the rail from the balcony of the rental unit in order to move their furniture out. When the rail was re-installed the strata council had the balcony inspected to make sure the railing was re-installed properly. Further to this claim, the Landlord also claims for **\$50.00** as the cost of a fine that is contained in the building bylaws of the strata building where the rental unit is located. The Landlord claims for the \$50.00 fine as the bylaws allow, as the strata precludes someone making an alteration to the common property without first obtaining the written permission of the strata corporation. In evidence the Landlord provided a copy of the invoice for the inspection, a copy of the bylaw, a copy of the Form K indicating the Tenants were given

a copy of the bylaws, and a copy of an email from the strata explaining they may fine the owner \$50.00.

Lastly, the Landlord claims **\$2,200.00** as liquidated damages for the Tenants ending the tenancy prior to the end of the fixed term. The Agent provided evidence that the liquidated damages are comprised of the re-leasing fee, moving charges, advertising, credit checks, cost of additional work for the Agent for the Landlord and making other arrangements with regard to the early end of tenancy. In evidence the Landlord supplied a copy of the tenancy agreement with the liquidated damages clause.

Analysis

Based on the above, the undisputed evidence and testimony, and on a balance of probabilities, I find that the Tenants breached the tenancy agreement and the Act, without authority to do so.

The tenancy agreement is a binding legal contract which both parties must abide by.

In British Columbia a tenancy may only end if done so in accordance with the Act.

Under section 45(3) of the Act the Tenants could not end the tenancy earlier than the fixed term date of April 30, 2016, unless there was some authority under the Act for them to do so. For example, if the Tenants felt the Landlord was in breach of a material term of the tenancy agreement, they could have written to the Landlord with a request to correct the breach and provide a reasonable time to do so. If the Landlord did not correct the problem within that time, then the Tenants might have ended the tenancy by giving notice earlier than the end of the fixed term. There is no evidence before me that this occurred.

Based on the undisputed evidence before me, I find that here the Tenants had no authority under the Act to end the tenancy. Therefore, as the Tenants breached the tenancy agreement and the Act by ending the tenancy without authority to do so, I find the Landlord is entitled to the liquidated damages as contained in the tenancy agreement. I find the Landlord has justified the amount and that it is not a penalty. I allow the Landlord **\$2,200.00** for this portion of the claim.

Based on the undisputed evidence before me, I further find the Landlord has established the claims for cleaning, painting and repairing the screen door, and the cost of a balcony inspection due to the Tenants removing a balcony railing, in the amounts of **\$85.00**, **\$325.50**, and **\$86.63** respectively.

However, I do not allow the claim of the Landlord for \$50.00 for a strata corporation fine. The evidence submitted was that the strata *might* charge such a fine, but there is insufficient evidence to show the strata actually did impose the fine.

Therefore, I find that the Landlord has established a total monetary claim of **\$2,797.13**, comprised of the above described amounts and the \$100.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of **\$1,100.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,697.13**. This order must be served on the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

Based on the undisputed evidence, I find the Tenants breached the Act and tenancy agreement by ending a fixed term tenancy agreement early, without authority to do so.

I further find the Landlord has established claims for cleaning and repairs at the rental unit. After offsetting the security deposit, the Landlord has a monetary order in the amount of **\$1,697.13**, enforceable against the Tenants in Provincial Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 25, 2016

Residential Tenancy Branch