



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, (MND), MNSD, FF

Introduction

This matter dealt with an application by the Landlords for a monetary order for unpaid rent as well as to recover the filing fee for this proceeding. The Landlords also applied to keep the Tenants' security deposit to offset the rent arrears.

The Landlords served the Tenants with a copy of the Application and Notice of Hearing by registered mail on March 23, 2009. According to the Canada Post online tracking system, the Tenants received their hearing packages on March 25, 2009. Consequently, I find that the Tenants were served as required by s. 89 of the Act and the hearing proceeded in their absence.

Issues(s) to be Decided

1. Are there arrears of rent and if so, how much?
2. Are the Landlords entitled to compensation for damages and if so, how much?
3. Are the Landlords entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started in 2007 and ended on January 25, 2009 when the Tenants moved out. At the beginning of the tenancy rent was \$2,000.00 per month and the Tenants paid a security deposit of \$1,000.00. Part way through the tenancy, the Landlords agreed temporarily to reduce the rent to \$1,800.00 per month while the rental property was being listed for sale. The property was removed from the market in late 2008 and rent was returned to \$2,000.00 per month effective January 1, 2009. Under the tenancy agreement, the Tenants were also responsible for paying utilities including (but not limited to) water.

The Landlords claim that the Tenants' rent cheques for July 2008 for \$1,800.00 and their cheque for January 2009 for \$2,000.00 were returned for non-sufficient funds. On January 23, 2009, the Tenants gave the Landlords a bank draft for \$1,800.00 in payment of July 2008 rent. The Landlords said the Tenants also gave them verbal notice on January 23, 2009 that they were ending the tenancy at the end of January, 2009. The Landlords deposited the Tenants' rent cheque for February 2009 and that cheque was also returned for non-sufficient funds. Consequently, the Landlords claim that the Tenants have rent arrears of \$2,000.00 for January 2009.

Residential Tenancy Branch
Ministry of Housing and Social Development

The Landlords also claim that they were unable to re-rent the rental unit for February 2009 and suffered a loss of rental income. The Landlords said they had to clean the interior and yard of the rental unit before it could be re-rented. The Landlords admitted that they did not take steps to re-rent it for the balance of February 2009 but instead assigned the management of it to a rental agency effective March 1, 2009.

The Landlords said the under the tenancy agreement the Tenants were responsible for paying the water bill and that at the end of the tenancy there was an unpaid bill for \$69.00.

The Landlords admitted they did not do a move out condition inspection report at the end of the tenancy but claimed they both spent 8 hours cleaning an upstairs carpet, appliances, cabinets, floors and interior windows. The Landlords also claimed that one of them spent 3 ½ hours cleaning up dog feces from the yard.

Analysis

In the absence of any evidence from the Respondents to the contrary and based on the copies of the returned cheques provided by the Landlords, I find that rent of **\$2,000.00** for January 2009 is unpaid and that the Landlords are entitled to recover that amount.

Section 45(1) of the Act says that a tenant of a periodic (or month to month) tenancy must give a Landlord one clear month's written notice that they are ending the tenancy. If a Tenant fails to give the proper notice, they may be liable for any resulting loss of rental income a landlord incurs. However, s. 7(2) of the Act says that a party who suffers damage must do whatever is reasonable to try to minimize their losses. What this means is that a landlord must try to minimize a loss of rental income by trying to re-rent the rental unit as soon as possible. In this case I find that due to the short notice of the Tenants it was not likely that the unit could be re-rented for February 1, 2009, however, I find that the Landlords did not take steps to try to re-rent it until March 1, 2009. Consequently, I find that the Landlords are entitled to a loss of rental income for only ½ of February 2009 (or to February 15, 2009) of **\$1,000.00**.

I also find that the Tenants are responsible for paying utilities to February 15, 2009 and that the final water bill is unpaid. The utility bill provided by the Landlords shows that the amount of \$69.00 was charged for the period December 29, 2008 to February 20, 2009. Consequently, I find that the Landlords are entitled to recover a prorated amount of **\$62.61** and award them that amount.

Residential Tenancy Branch
Ministry of Housing and Social Development

Sections 24 and 35 of the Act require a landlord to complete a condition inspection report at the beginning and end of a tenancy. This is to ensure that there is adequate evidence to show if the Tenants are responsible for damage that occurs to the rental unit during the tenancy. In the absence of a condition inspection report, a Landlord will generally be required to provide other corroborating evidence (such as photographs). In the absence of any corroborating evidence from the Landlords, I find that there is insufficient evidence to support their claim for general cleaning of the interior and the yard of the rental property and that part of the Landlords' claim is dismissed.

I find that the Landlords are not entitled to be reimbursed for the returned cheque for February 2009 as they deposited that cheque on or about February 18, 2009; almost a month after they had already received notice from the Tenants that the tenancy was ending at the end of January 2009. The Landlords admitted that they were not charged NSF fees for the Tenants' cheques but rather as a result of the Tenants' cheques not clearing their account, there was a shortfall and they were charged a fee because their cheques to other parties were NSF. However, based on the bank statements provided by the Landlords, it appears that each bank charge was incurred before the respective rent cheques were debited from the account. Furthermore, section 7 of the Regulations to the Act says that a Landlord may recover "a service fee charged by a financial institution to the Landlord for the return of a tenant's cheque." For all of these reasons, I find that the Landlords are not entitled to recover bank fees and that part of their claim is dismissed.

As the Landlords have been successful in this matter, I find that they are entitled to recover their \$50.00 filing fee for this proceeding. Pursuant to s. 38(4) of the Act, I order the Landlords to keep the Tenants' security deposit plus accrued interest in partial payment of the damage award. The Landlords will receive a monetary order for the balance owing as follows:

Unpaid rent January 2009:	\$2,000.00
Loss of rent February 2009:	\$1,000.00
Unpaid Utilities:	\$62.61
Filing fee:	<u>\$50.00</u>
Subtotal:	\$3,112.61
Less: Security deposit:	(\$1,000.00)
Accrued interest:	<u>(\$22.67)</u>
Balance Owing:	\$2,089.94

The Landlords also indicated that they would incur costs in connection with a hot tub repair and carpet cleaning, however, those items were not claimed in the Landlords' application and as a result, they must re-apply for that relief.



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

Conclusion

A monetary order in the amount of **\$2,089.94** has been issued to the Landlords and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: June 26, 2009.

Dispute Resolution Officer