

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes: MNSD, MNR, FF

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence provided by the parties prior to the Hearing. The Tenant’s interpreter affirmed to interpret the Mandarin language to the English language and the English language to the Mandarin language to the best of his ability. The parties gave affirmed evidence and this matter proceeded on its merits.

Preliminary Matter

On May 7, 2009, the Landlord amended their application filed April 21, 2009, to withdraw their application for an order of possession and to increase their monetary claim.

Issue(s) to be Decided

This is the Landlord’s application for a Monetary Order for unpaid rent and utilities; to keep all of the security deposit; and to recover the filing fee for the cost of the application from the Tenants.

- (1) Is the Landlord entitled to a monetary order and to keep the security deposit?
- (2) Is the Landlord entitled to recover the filing fee from the Tenants?

Background and Evidence

Landlord's testimony

The Landlord's agent KL testified that he mailed the Tenants the amended Application for Dispute Resolution and hearing package on May 9, 2009, by registered mail, to the Tenants' forwarding address. The Landlord provided a copy of the registered mail receipt and tracking number.

The Landlord, via her agents, testified that:

- The Landlord issued a Notice to End Tenancy for Unpaid Rent on April 15, 2009, which was served on the Tenants on April 15, 2009. The Tenants vacated the rental unit at the end of April, 2009.
- The monthly rent was \$2,200.00, due on the first day of the month. The Tenant paid a security deposit to the Landlord on April 10, 2006, in the amount of \$1,100.00.
- The tenancy started in April, 2006. The tenancy agreement was a one year lease, which was followed by a month-to-month tenancy. The Tenants lived in the main floor of the rental property. The Landlord lives in the basement. The Tenants were responsible for 2/3rds of the utilities under the lease agreement.
- The Landlord began showing signs of a change in behaviour in the autumn of 2008 and was hospitalized in the winter of 2009. The family became concerned about her financial affairs, and in particular, payment of the rent by the Tenants. On February 27, 2009, Power of Attorney was granted to KL, GL and RL.
- The Landlord's agents discovered that the Landlord's banking statements showed no rent payments since August of 2008. Furthermore, the Tenants had not paid their portion of the utilities since April, 2007.

- The Tenants gave the Landlord cheques for the months of September to December, but the Landlord did not cash them.
- In July of 2008, the Landlord's agent WS provided the Tenant HM with his number in case of any problems. In December, 2008, the Landlord's agent KL gave the Tenants new contact information for the Landlord.
- On April 5, 2009, the Landlord's agent WS visited the Tenants and was successful in collecting rent for the month of April, 2009, but the Tenants declined to pay the arrears for January, February and March.
- The Landlord is applying for \$15,400.00 in unpaid rent for the months of September to December, 2008 and January to March, 2009 and for loss of rent for the month of May, 2009 in the amount of \$2,200.00.
- The Landlord is also applying for 2/3 of the Teresen Gas bills from April 2007 to April 2009, in the amount of \$3,400.61 and the BC Hydro bills, in the amount of \$1,067.32. The Landlord provided copies of Teresen Gas and BC Hydro bills for the subject period of time.
- The Tenants left the rental unit without cleaning it, or shampooing the carpets. The Landlord is applying for the cost of shampooing the carpets, in the amount of \$361.06. The Landlord provided photocopies of the rental unit, together with a copy of the invoice for carpet cleaning.

Tenant's testimony

The Tenant testified that she did not provide the Landlord with a copy of her evidence.

The Tenant, through her interpreter, gave the following testimony:

- The Tenants did not pay rent for the months of January, February and March because they did not know how to get in touch with the Landlord until the end of March. The Tenant did not receive new contact information for the Landlord in December.

- In 2006, the Tenants asked the Landlord for a rent reduction. The Landlord did not reduce the rent, but agreed that the Tenants would no longer have to pay anything towards utilities.
- The Tenants should not have to pay rent for January, February or March because they were without hot water and the Landlord's agents refused to fix it. Additionally, there were gun shots near the Tenants' residence and a window got broken. The Tenant was afraid. The Tenant went to Taiwan for the month of December because the house was uninhabitable because there was no hot water.
- The Tenant agrees that they owe rent for the months of September to December, 2008, but says that she has already given the Landlord cheques for those months and has lost trust in the Landlord. She is afraid that the Landlord will attempt to cash the cheques they already have as well as any new cheques she might give them for September to December.

Analysis

I have carefully considered the testimony and evidence of the parties, and find that the Tenants owe the Landlord rent for the months of September, 2008 to and including March, 2009, in the amount of \$15,400.00. The Landlord gave the Tenants a Notice to End Tenancy effective April 28, 2009, and the Tenants moved out in accordance with the Notice. Therefore, the Landlord's claim for loss of rent for the month of May, 2009, is dismissed without leave to re-apply.

The Landlord's agents were unaware of any agreement between the Landlord and the Tenants that the Tenants did not have to pay their portion of utilities. However, the Landlord didn't fall ill until the fall of 2008 and utilities have not been paid by the Tenants since April of 2007. I find on the balance of probabilities, if the Landlord was expecting the Tenants to pay a share of the utilities, she would have taken action after they had not paid in April, 2007. Therefore, the Landlord's application with respect to unpaid utilities is dismissed without leave to re-apply.

The Landlord provided undisputed photographic evidence of the state of the carpets when the Tenants moved out of the rental unit. The carpets are very dirty and stained. I allow the Landlord's claim with respect to reimbursement for the cost of cleaning the carpets.

The Landlord has been partially successful in her application and is entitled to recover the cost of the filing fee from the Tenants.

Pursuant to Section 72 of the Act, the Landlord may deduct the security deposit, together with accrued interest, in partial satisfaction of her claim.

The Landlord has established a monetary claim as follows:

Rent arrears for September 2008 to March 2009:	\$15,400.00
Cost of shampooing carpets:	\$361.06
Recovery of the filing fee:	\$100.00
Less security deposit and interest of \$37.54:	<u><\$1,137.54></u>
TOTAL after set-off of the security deposit:	\$14,723.52
	=====

Conclusion

Pursuant to Section 67 of the Act, I hereby grant the Landlord a Monetary Order in the amount of \$14,723.52 against the Tenants. This Order must be served on the Tenants and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

June 15, 2009
