



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for a Monetary Order for unpaid rent, for damages to the rental unit, for compensation for damage or loss under the *Residential Tenancy Act (Act)*, the regulations or tenancy agreement, an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the landlords to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on August 01, 2009. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants are deemed to be served the hearing documents on August 06, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- Are there arrears of rent and if so, how much?
- Are the landlords entitled to a Monetary Order for loss of income?
- Have the landlords provided sufficient evidence that the damage is caused by actions or neglect of the tenants and of the actual amount required to compensate them for the claimed loss or to rectify the damage?
- Are the landlords entitled to keep all or part of the tenant's security deposit?
- Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

The tenants originally rented this rental unit from the landlords in May, 2006. Since that time they have entered into a new tenancy agreement each year for a fixed term. This tenancy started on May 01, 2008 for a fixed term until April 31, 2009. Rent for this unit was \$1,750.00 per month and was due on the first of each month. The tenants paid a security deposit of \$800.00 on April 04, 2006. The landlords conducted a move in condition inspection with the tenants.

The landlord's testify that the tenants paid rent for January, 2009 but the cheque was returned as there were insufficient funds available. The tenants then paid January's rent in cash. The tenants rent cheque for February, 2009 was also returned as insufficient funds were available. The landlords went to speak to the tenants and were told they would be moving out at the end of February, 2009 and would pay the outstanding rent owed on or around February 19, 2009. On February 09, 2009 the landlords served the tenants with a 10 Day Notice to End Tenancy for unpaid rent.

The landlords gave the tenants a notice to enter the property on February 13. At this stage they found the tenants had moved out and abandoned the rental unit. The landlords sent the tenants Notices that they should attend the move out condition inspection and the tenants failed to take part in this. The landlords carried out the inspection in the tenant's absence.

The landlords found the tenants had not cleaned the rental unit and had caused some damages to the unit. These are indicated on the inspection report and the landlords have provided invoices for the cleaning and repair to the unit. The landlords incurred the following costs:

Suite cleaning \$255.00

Carpet cleaning (twice) \$157.50

Repair and replacement of interior doors Plus unplugging shower drain \$250.00

Supply and install cook top Labour \$120.00, Top \$529.00.

The landlord made numerous attempts at re-renting the unit and advertised extensively at a cost of \$677.25 the unit was re-rented For May 01, 2009. The landlords seek to recover these costs. The landlords also seek to recover a loss of rent for February, 2009 to an amount of \$1,750.00 and a loss of revenue for March and April, 2009 because the tenants left the tenancy before the end of the

fixed term to an amount of \$3,500.00. The landlords request to keep the tenants security deposit in partial payment of the outstanding rent and damages go the rental unit.

Analysis

The tenants did not appear at the hearing, despite having been sent a Notice of the hearing to an address the tenants are known to reside at; therefore, in the absence of any evidence from the tenants, I have applied a test for damage or loss under the *Act* to determine if the landlords are entitled to a Monetary Order. The landlords must provide evidence of the following:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

I find the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the tenant. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlords have provided sufficient evidence to support their claim and they are able to meet all of the components of the above test with regards to their claim for compensation for damage or loss under the *Act*. Therefore, I find that the landlord's application is upheld and pursuant to s. 67 of the *Act* the landlords are entitled to recover the cost of the damages and cleaning to the rental unit, unpaid rent, loss of revenue and advertising costs. As the landlords have been successful in this matter, they are also entitled to recover the **\$100.00** filing fee for this proceeding.

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I order the landlords pursuant to s. 38(4) of the *Act* to keep the tenant's security deposit in partial payment of the rent arrears. The landlords will receive a Monetary Order for the balance owing as follows:

Cost of repair and cleaning	\$1,266.50
Loss of revenue for March and April, 2009	\$3,500.00
Advertising costs to re-rent unit	\$677.25
Filing fee	\$100.00
Less security deposit and accrued interest	(-\$827.28)
Total amount due to the landlords	\$6,466.47

Conclusion

A Monetary Order in the amount of **\$6,466.47** has been issued to the landlords and a copy of it must be served on the tenants. If the amount of the order 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: November 24, 2009.

Dispute Resolution Officer