

DECISION

Dispute Codes MND, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for damage to the unit, a monetary order for unpaid rent, compensation owed for damage or loss and recovery of the filing fee. Both parties participated in the conference call hearing.

Issues to be Decided

Is the landlord entitled to any of the above under the Act.

Summary of Background and Evidence

This tenancy started November 1, 2009 with rent of \$850.00 per month. On July 20, 2010 the tenants gave the landlord verbal notice that they would be vacating the rental unit August 21, 2010.

The landlord testified that the tenants did not give 1 month's clear notice in writing as required by the Act and that the tenants vacated the rental unit August 31, 2010 and did not pay the rent for September 2010 in the amount of \$850.00.

The landlord stated that the rental unit was very clean with exception of a small stain in the master bedroom carpet and scratches on a wall/corner in the bathroom. The landlord is seeking a monetary claim for \$1250.00 for unpaid rent and damages.

September Rent	\$850.00
Carpet Cleaning	\$200.00
Painting-Bathroom	\$200.00
Total	\$1250.00

The tenants testified that they left the unit very clean and contend that there were no stains on the carpet. The tenants stated that the lower scratches on the bathroom wall were there prior to them taking possession and that the landlord had caused the scratches on the upper area of the wall, the landlord refutes this testimony. The tenants maintain that as their tenancy agreement was verbal and that as this was a family relationship, that providing notice verbally was acceptable. The tenants have submitted evidence reflecting on-going issues that began at the start of the tenancy however the tenants have not applied through this office to have any of the issues resolved.

Both parties agree that there was neither a move-in or move-out inspection completed which reflects the condition of the rental unit however the landlord stated that these were the first tenants to live in this rental unit and that the carpets were new and there was no damage anywhere.

The landlord has not submitted any receipts for painting the bathroom or cleaning the carpet and stated that the carpet stain was so small that it did not show in photographs.

Law

Residential Tenancy Act **Section 13 Requirements for tenancy agreements**

(1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

- (a) the standard terms;*
- (b) the correct legal names of the landlord and tenant;*
- (c) the address of the rental unit;*
- (d) the date the tenancy agreement is entered into;*
- (e) the address for service and telephone number of the landlord or the landlord's agent;*

Residential Tenancy Act **Section 23 Condition inspection: start of tenancy or new pet**

(1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

- (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and*
- (b) a previous inspection was not completed under subsection (1).*

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

- (a) the landlord has complied with subsection (3), and*
- (b) the tenant does not participate on either occasion.*

Residential Tenancy Act **Section 45 Tenant's notice**

(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Residential Tenancy Act **Section 52 Form and content of notice to end tenancy**

In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

Analysis

All residential tenancies in the Province of British Columbia fall under the Residential Tenancy Act therefore the requirements of that Act must be followed when providing notice or claiming for damages even if the tenancy agreement was verbal. Existence of a familial relationship between a landlord and tenant does not preclude a tenancy from falling under the Act. A tenancy did exist between these two parties as the tenants were residing in the rental unit and paying rent to the landlord.

Based on the documentary evidence and testimony, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to a monetary order for unpaid rent. I do not find however that the landlord has met the burden of proving that they have grounds for entitlement to a monetary order for damages and cleaning costs.

I find that the landlord has established a claim for \$850.00 in unpaid rent.

The landlord is entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the landlord has established a monetary claim for \$850.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee.

A monetary order in the amount of **\$900.00** has been issued to the landlord 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: February 3, 2011

Residential Tenancy Branch