



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant's application: MT, MNDC

Landlord's application: MNR; MNDC

Introduction

This Hearing was convened to consider cross applications. The Tenant seeks to be allowed more time to file an Application to cancel a Notice to End Tenancy; and compensation for damage or loss under the Act, regulation or tenancy agreement.

The Landlord seeks a Monetary Order for unpaid rent, damages to the rental property and loss of revenue.

Preliminary Matters

RE: Female Tenant's request for adjournment

The female Tenant provided, by fax dated April 5, 2011, a request that the matters be adjourned. Included with the request was a doctor's note stating that the female Tenant was ill. The doctor stated that the nature of her illness required that: "(the Hearing) be done.... when she has some legal aid of her own."

The Landlord stated that he was unaware of the female Tenant's request to adjourn the Hearing and was opposed to an adjournment. Neither Tenant signed into the Hearing.

Rules 6.1 and 6.2 of the Rules of Procedure set out the procedure for requesting adjournments:

6.1 Rescheduling of a dispute resolution proceeding by consent more than three days in advance

The Residential Tenancy Branch will reschedule a dispute resolution proceeding if written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least three (3) business days before the scheduled date for the dispute resolution proceeding.

6.2 If consent to rescheduling the dispute resolution proceeding cannot be obtained

If a party wants to request that a dispute resolution proceeding be rescheduled to another date because that party will be unable to attend the dispute resolution proceeding due to circumstances beyond his or her control, and if the opposing party does not consent to rescheduling the dispute resolution proceeding, the dispute resolution proceeding must commence at the scheduled time and the party requesting the adjournment can ask the Dispute Resolution Officer to reschedule the dispute resolution proceeding by:

a) submitting to the Residential Tenancy Branch, at least three (3) business days before the dispute resolution proceeding, a document requesting that the dispute resolution proceeding be rescheduled and setting out the circumstances that are beyond the party's control that will prevent him or her from attending the dispute resolution proceeding; or

b) having an agent represent him or her attend the dispute resolution proceeding to make a request to the Dispute Resolution Officer to reschedule the dispute resolution proceeding and to describe the circumstances that are beyond the party's control that will prevent him or her from attending the dispute resolution proceeding.

The female Tenant's application to adjourn is dismissed for the following reasons:

- The Tenant did not follow the procedures set out in the Rules of Procedure. No attempt was made to get the consent of the Landlord to an adjournment. The Tenant did not submit her request to the Residential Tenancy Branch three business days before the Hearing.
- The Tenant filed her Application in November, 2010. This was a reconvened Hearing, originally set for March 15, 2011. The male Landlord and both of the Tenants signed into the Hearing on March 15, 2011. No request was made at that time for an adjournment.
- The Tenant did not arrange for an advocate or agent to attend on her behalf at the reconvened Hearing for the purposes of requesting an adjournment.
- There was no explanation as to why the male co-Tenant did not represent both Tenants at the reconvened Hearing.

RE: Non-attendance by either of the Tenants at the reconvened Hearing

On March 15, 2011, the Tenant's Application was scheduled to be heard. The Landlord advised that he had also filed an Application that was scheduled to be heard on March 15, 2011, but the Landlord's file and documentary evidence was not available to me at the Hearing. Therefore, I adjourned both matters to be heard at a date stipulated on a

Notice that was enclosed with my interim Decision. The female Tenant provided a post office box number as her address for service. The Residential Tenancy Branch provided copies of the Notices and my Interim Decision to both parties.

I am satisfied that the Tenants received the Notice and my Interim Decision because the female Tenant provided a request to adjourn today's reconvened Hearing. The male Tenant provided the female Tenant's request to the Government Agent on April 5, 2011.

Neither Tenant signed into the Hearing, nor did an advocate or agent attend on their behalf.

Therefore, the Tenant's Application is dismissed without leave to reapply.

Service of the Landlord's Application and documentary evidence upon the Tenants

The Landlord filed his Application for Dispute Resolution on March 4, 2011.

The Landlord gave affirmed testimony at the Hearing.

The Landlord testified that the Tenants had moved out of the rental unit without giving a forwarding address, but he knew where the male Tenant worked. The Landlord stated that on March 7, 2011, he provided the male Tenant with 2 copies of his Application and documentary evidence at his place of employment. Based on the testimony of the Landlord I am satisfied that the male Tenant was served with the Landlords' Notice of Hearing documents and documentary evidence in compliance with the provisions of Section 89(1)(a) of the Act.

The Landlord testified that he served the female Tenant with the Landlords' Notice of Hearing documents and documentary evidence on March 15, 2011, by registered mail, to the address the female Tenant provided for service at the March 14, 2011 Hearing. The Landlord provided a tracking number of the registered mail documents. Based on the testimony of the Landlord, I am satisfied that the female Tenant was served in accordance with the provisions of Section 89(1)(d) of the Act. Section 90 of the Act deems service of documents in this manner to be effected 5 days after mailing the documents.

The Hearing continued in the absence of the Tenants with respect to the Landlord's application.

Issue(s) to be Decided

- Are the Landlords entitled to a monetary award for unpaid rent, loss of revenue, and damages to the rental unit?

Background and Evidence

The Landlord gave the following testimony:

This tenancy started on June 1, 2002. The Tenants paid a security deposit in the amount of \$1,000.00 on May 29, 2002. The Tenants did not pay rent for the month of February, 2010, so the Landlord issued a Notice to End Tenancy for Unpaid Rent. That Notice was cancelled at a Dispute Resolution Hearing, because the Dispute Resolution Officer found that the Landlord had reinstated the tenancy by accepting rent payments for subsequent months. February rent remains unpaid to date.

The Tenants did not pay rent for the months of October and November, 2010.

When the Tenants moved out, they left a lot of household effects, furniture and garbage. The rental unit was very dirty and the doors, floors, a door frame and walls were damaged. The Landlord provided photocopies of photographs in evidence. The Landlord also provided receipts for the cost of cleaning the rental unit; dump runs and repairs.

The Landlords seek a monetary award, calculated as follows:

Unpaid rent for February, 2010	\$1,160.00
Cost of cleaning (26.5 hours @ \$20.00 per hour) and supplies	\$567.98
Labour for removal and disposal of items	\$537.60
Dump fees	\$155.25
Labour and materials for repairs	<u>\$1,466.05</u>

TOTAL monetary claim	\$6,206.88
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Analysis

Based on the affirmed testimony and documentary evidence provided by the Landlords, I find that they have established their monetary award. The Tenants did not attend the Hearing to give testimony and did not provide any documentary evidence to dispute the Landlords' claim.

Pursuant to the provisions of Section 72 of the Act, the Landlords may apply the security deposit together with accrued interest in the amount of \$35.42 towards partial satisfaction of their monetary award. I hereby provide the Landlords with a Monetary Order against the Tenants the amount of **\$5,171.46** (\$6,206.88 - \$1,035.42).

Conclusion

The Tenant's application is dismissed in its entirety.

I hereby provide the Landlords with a Monetary Order for service upon the Tenants in the amount of **\$5,171.46**. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: April 07, 2011.

Residential Tenancy Branch