



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes (MNR), MND, MNDC, MNSD, FF, SS

Introduction

This matter dealt with an application by the Landlords to recover cleaning and repair expenses for damages caused by the Tenants to the rental unit and property, to recover the cost of appliances and fixtures they claim the Tenants removed at the end of the tenancy, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts. The Landlords admitted that they checked off a box seeking an Order for substitutional service in error and as a result, that part of their claim is dismissed without leave to reapply.

The Landlords also applied for compensation for a loss of rental income but clarified during the hearing that the claim was for a period of time following the effective date of an Order of Possession when the Tenants were still residing in the rental unit but did not pay rent. At the beginning of the hearing, the Landlords withdrew their claim for cleaning and repair expenses and for compensation for the removal of appliances and fixtures and accordingly, they may reapply for that relief within the time limit set out under s. 60 of the Act.

The Landlord, J.D., said she served the Tenants on April 8, 2011 by registered mail with the Application and Notice of Hearing (the "hearing package") to a forwarding address provided by them. According to the Canada Post online tracking system, the Tenants received this mail on April 11, 2011. Based on the evidence of the Landlords, I find that the Tenants were served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

Issue(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Are the Landlords entitled to compensation for a loss of rental income and if so, how much?

Background and Evidence

This tenancy started on May 1, 2007. Rent was \$950.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$475.00 at the beginning of the tenancy. In previous proceedings between these parties held on

March 10, 2010, the Landlords were granted an Order of Possession to take effect on March 31, 2010 for the following reason:

“The tenants have made changes to the rental unit that go far beyond the usual. They have renovated the actual structure of the house by installing skylights and they are slowly filling up the yard with temporary and unsightly structures. The end result of the tenants’ labours is a fortress-like compound....The Tenants continued construction in the months after the Landlord’s agent directed them to remove the clutter from the yard.”

The Landlords said the Tenants did not vacate the rental unit until early June 2010 but then left the structures and many other belongings behind on the rental property. The Landlords said they had to dismantle and remove the Tenants’ structures and belongings so that the property could be transferred to new owners in July 2010. The Landlords said the Tenants did not pay rent for April, May and June 2010.

Analysis

In the absence of any evidence from the Tenants to the contrary, I find that the Landlords are entitled to recover unpaid rent for the months of April and May and for the 1st week of June, 2010. I also find that the Landlords had to use the balance of the month of June 2010 to remove many of the Tenants’ structures and belongings on the rental property. Consequently, I find that the Landlords are also entitled to recover a loss of rental income for the last 3 weeks of June 2010 for a total of \$2,850.00.

As the Landlords have recovered only a portion of the compensation they initially claimed, I find that they are only entitled to recover from the Tenants one-half of the filing fee they paid for this proceeding or \$50.00. I order the Landlords pursuant to s. 38(4) of the Act to keep the Tenants’ security deposit of \$475.00 plus accrued interest of \$11.98. The Landlords will receive a Monetary Order for the balance owing of \$2,413.02.

Conclusion

A Monetary Order in the amount of **\$2,413.02** 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: July 13, 2011.

Residential Tenancy Branch