

DECISION

Dispute Codes:

MNR; MNDC, MNSD; FF

Introduction

This is the Landlords' application for a Monetary Order for unpaid rent and damages to the rental unit; to retain the security deposit in partial satisfaction of their monetary claim; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenants received the Notice of Hearing documents by registered mail sent on May 9, 2011.

Issues to be Decided

- Are the Landlords entitled to a Monetary Order pursuant to the provisions of Section 67 of the Act?

Background and Evidence

The parties agreed on the following facts:

- The tenancy agreement was a one year lease, commencing January 1, 2010.
- Monthly rent was \$1,850.00, due on the first day of each month.
- The Tenants paid a security deposit in the amount of \$1,000.00 at the beginning of the tenancy.
- There was no Condition Inspection Report completed at the beginning or the end of the tenancy that complies with the requirements of the Residential Tenancy Act and Regulation.

The Landlords gave the following relevant testimony:

- The Tenants abandoned the rental unit on December 3, 2010, so the Landlords were not able to complete a Condition Inspection Report at the end of the tenancy. The female Landlord walked through the rental unit with a neighbor, who will give testimony.

- The Tenants gave the keys to the rental unit to a neighbor, who in turn provided the keys to the Landlords on December 5, 2010.
- The Tenants did not pay the electricity bill, so the power was cut off. The house was a mess. There were holes in the walls, damages to the ceilings and doors, and the carpets were very dirty.
- It took one week to repair the rental unit and another week to allow the walls to dry and to clean it.
- The rental unit was last painted in March of 2008.
- The Landlords provided a receipt in evidence for the repairs and cleaning.

The Landlords' witness gave the following testimony:

- The witness lives next door to the rental unit and has lived next door since February, 2007. He met the Landlords in 2007 and was a guest at the Landlords' house when the Landlords first lived at the rental unit.
- There were other tenants in the rental unit after the Landlords moved out and prior to the Tenants moving in. The other tenants lived there for approximately 6 months.
- The witness saw the rental unit when the Tenants moved out and the carpets and walls were very dirty. The witness did not see inside the rental unit during the previous tenant's tenancy or at the beginning of the Tenants' tenancy.

The Tenants gave the following relevant testimony:

- For the last few months of the tenancy, the parties communicated by e-mail because there was a break down in communications between the parties due in part to the Tenants being late paying rent.
- The parties had an agreement that the Tenants could pay November's rent on November 20, 2010.
- The Tenants did not abandon the rental unit. On November 15, 2010, the Landlords asked the Tenants if they would consider moving out early because the Landlords wanted to move back into the rental unit and the Tenants agreed to do so. The Tenants read some emails into evidence.
- The Tenants did not pay rent for November on November 20, 2010, because they needed the money to move.
- The Tenants moved out on December 1, 2010.
- The Tenants agreed that the Landlords could keep the \$1,000.00 security deposit to pay for the cost of shampooing the carpets (\$500.00) and fixing a hole

in the bathroom door (\$250.00) and a hole in the wall of one of the bedrooms (\$250.00).

- Other than some cleaning, and the damage to one wall and the bathroom door, the Tenants did no damage to the rental unit. The rental unit was damaged by the previous tenants prior to the Tenants moving in. The female Tenant and the male Landlord did a very quick walk through at the beginning of the tenancy and the female Tenant asked if the Landlords would be painting and cleaning the carpets, but the male Landlord said it was being rented “as is”.

Analysis

Regarding the Landlords' claim for unpaid rent

Section 26 of the Act requires tenants to pay rent when it is due unless they have a right under the Act to deduct all or a portion of the rent. In this case, the Tenants had no such right to withhold any rent for the month of November, 2010. The Tenants agreed that they did not pay rent for the month of November, 2010. Therefore, this portion of the Landlords' claim is granted in the amount of \$1,850.00.

Based on the evidence before me, I find that the parties mutually agreed to end the tenancy before the end of the term. The Landlords had no intention of re-renting the rental unit and had decided to move back in. Therefore, the Landlords are not entitled to unpaid **rent** for the month of December, except for the pro-rated rent for the days the Tenants overheld (December 1, 2010 until December 5, 2010 when the Landlords recovered the keys from the neighbor). I calculate that amount to be \$298.39 ($\$1,850.00 / 31 \times 5$ days).

Regarding the Landlords' claim for damages

The Landlords did not comply with the provisions of Section 23 of the Act (requirement for Condition Inspection at the beginning of a tenancy), and the witness did not attest to the condition of the rental unit at the beginning of the tenancy. The Landlords provided photographic evidence of the condition of the rental unit at the end of the tenancy, but no photographic evidence of the condition at the beginning of the tenancy. The Tenants deny damaging the rental unit, other than a hole in a bathroom door and a bedroom wall, and not shampooing the carpets. Therefore, I find that the Landlords did not provide sufficient evidence that the remaining damages were caused by the Tenants. The Tenants agreed that the Landlords could retain the security deposit for the cost of repairing and cleaning the rental unit and therefore, I allow the Landlord's claim for damages in the amount of \$1,000.00.

The Landlord seeks to recover late fees in the amount of \$100.00. Section 7(1)(d) of the Regulation allows for administrative fees up to \$25.00 per month for return of a tenant's cheque by a financial institution or for late payment of rent. Section 7(2) of the Regulation states that such fees must be provided for in the tenancy agreement. Section 5 of the Act prohibits contracting outside of the Act. In this case, clause 12 of the tenancy agreement provides for late fees of \$5.00 per day. This clause does not comply with the provisions of the Act and Regulation and therefore is not enforceable. The Landlords' claim for \$100.00 in late fees is therefore dismissed.

The Landlords have been partially successful in their claim and are entitled to recover \$50.00 of the filing fee from the Tenants.

Pursuant to Section 72(2)(b) of the Act, the Landlords may apply the security deposit towards partial satisfaction of the Landlords' monetary award. No interest has accrued on the security deposit.

The Landlords have established a monetary claim as follows:

Unpaid rent for November, 2010	\$1,850.00
Damages	\$1,000.00
Partial recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$3,198.39
Less security deposit	<u>- \$1,000.00</u>
TOTAL AMOUNT DUE TO THE LANDLORDS AFTER SET-OFF	\$2,198.39

Conclusion

I hereby provide the Landlords a Monetary Order in the amount of **\$2,198.39** for service upon the Tenants. 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: July 13, 2011.

Residential Tenancy Branch